

2 vols

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John Beard Jr.

North Carolina State **LAW**
Raleigh

1822

OF THE

STATE OF NORTH-CAROLINA,

INCLUDING

THE TITLES OF SUCH STATUTES AND PARTS OF
STATUTES OF GREAT BRITAIN

AS ARE IN FORCE IN SAID STATE;

TOGETHER WITH

The second Charter granted by Charles II. to the
Proprietors of Carolina;

The Great Deed of Grant from the Lords Proprietors;

The Grant from George II. to John Lord Granville;

The Bill of Rights and Constitution of the State, including the names
of the Members of the Convention that formed the same;

The Constitution of the United States, with the Amendments; and

The Treaty of Peace of 1783;

WITH

MARGINAL NOTES AND REFERENCES.

Revised, under the authority of the General Assembly, by

HEN. POTTER, J. L. TAYLOR & BART. YANCEY, ESQ'S.

And published according to an Act of the Legislature of 1819, under the
superintendence of

HENRY POTTER.

DOES NOT CIRCULATE

IN TWO VOLUMES.

VOL. I.

RALEIGH:

PRINTED AND SOLD BY J. GALE,

1821.

District Court of North-Carolina, to-wit :

BE IT REMEMBERED, That on the fifth day of October, in the forty-sixth year of the Independence of the United Statss of America, JOSEPH GALES hath deposited in this office the title of a Book, the right whereof he claims as Proprietor, in the words following, to wit,

“Laws of the State of North-Corolina, including the titles of such Statutes and parts of Statutes of Great Britain as are in force in said State ; together with the second Charter granted by Charles II. to the Proprietors of Carolina ; the Great Deed of Grant from the Lords Proprietors ; the Grant from George II. to John Lord Granville ; the Bill of Rights and Constitution of the State, including the names of the Members of the Convention that formed the same ; the Constitution of the United States, with the Amendments ; and the Treaty of Peace of 1783 ; with marginal Notes and References. Revised, under the authority of the General Assembly, by Henry Potter, J. L. Taylor and Bartlet Yancey, Esqs. and published according to an Act of the Legislature of 1819, under the superintendence of Henry Potter.

In conformity to the Act of the Congress of the United States, entitled “ An Act for the encouragement of Learning, by securing the copies of Maps, Charts, and Books, to the Authors and Proprietors of such copies, during the time therein mentioned.” And also to an Act, entitled an “ An Act supplementary to an act, entitled an Act for the encouragement of Learning, by securing the copies of Maps, Charts, and Books to the Authors and Proprietors of such copies, during the times therein mentioned, and extending the benefits thereof to the arts of designing, engraving, and etching historical and other prints.”

WM. H. HAYWOOD, *Clerk.*

REPORT

Of the Commissioners appointed by an act of the Legislature of 1817, to revise the laws of North-Carolina.

To the honorable the General Assembly of the State of North-Carolina.

The undersigned commissioners, appointed under the act of 1817, c. 16, to revise the public acts of the General Assembly, and to enumerate and specify the Statutes and parts of Statutes of Great-Britain, which are in force in the state, have the honor to Report, That they have finished the work committed to them, and hold it ready for inspection, and for such disposition of it as your honorable body may think proper to make.

The code, as revised, contains all the acts of Assembly from the year 1715, to 1818,* inclusive, which are now in force, together with some which have been repealed or superseded by subsequent acts, but which may be regarded as the foundation of some vested right, or as authorising some mode of proceeding, a reference to which may be necessary in the deduction and establishment of titles, or as the muniments, in some shape or other, of estates or interests; and these are carefully noted in the margin, as repealed, altered or obsolete, according to their true character. Wherever a repealed law did not appear necessary to be referred to, for these or other purposes of equal moment, it has been omitted, as an embarrassing incumbrance to the statute book; and should a resort to it ever be necessary, as indicating the progressive changes of the law, or as subsidiary to the investigations of the jurist or historian, it is still to be found in the compilation heretofore made.

The general course pursued by the commissioners has been, to take up each act singly, and to examine deliberately, in what respect it has been altered or modified by subsequent legislation, and to make distinct references to the date, chapter and section of any law, varying in any respect, the first enactment. The earliest law, therefore, on each subject, may be regarded as the foundation of a statutory system, of which the changes and ramifications are traceable by precise and discriminating marginal notices.

From the acts on the same subject afterwards passed, reference is made to those which are antecedent and subsequent; and every one to which the attention is directed, either contains within itself all the

* The acts of 1819 were afterwards included.

legislative provisions on the particular subject, or points, by an easy reference, to all other acts appertaining to the same system; and, to afford a greater facility to the enquirer, it is proposed to have but one series of chapters, and to insert them, with the dates of the acts, at the top of the pages in regular order. Thus the reader, instead of meeting a list of statutes described only by the year and chapter, is directed, at once, to the point he may be pursuing.

In adopting this plan, the commissioners considered that they were acting in furtherance of the views of the Legislature, as expressed in the act authorising the revision, and that the public interest and economy would be thereby promoted.

The arrangement of the acts under distinct heads, and in alphabetical order, has its advantages, and would be suitable for an abridgement or manual; but a revisal should contain every part of the act in force, without separating the different sections, and placing them under as many distinct heads as there are different subjects blended in the same act.

In giving construction to a statute, the intention of the Legislature is much better understood by an examination of the whole statute, than the particular clause which may more immediately relate to the question under consideration.

An alphabetical arrangement requires, necessarily, either that the sections be detached, or that the entire act be placed under several heads. In either event, it was considered, that the inconvenience would be greater than in the mode adopted. Another consideration was, that by due care and attention on the part of those who may hereafter superintend the printing of the public laws, the future acts of the General Assembly, by proper marginal references, may be made a continuation of the present revisal, and thereby supersede the expense of another.

Upon the other branch of the duty assigned to the commissioners, they have the honor further to Report: That they entered upon this task, under the direction of the general rule furnished by the act of 1778, c. 5, the substance of which is, that such British statutes as were in force before that period, and were not inconsistent with the freedom and independence of the State and the Constitution, and which have not been provided for in the whole or in part, nor abrogated, repealed, expired, or become obsolete, are thereby declared to be in full force.

In order to meet the enquiry, what statutes were in force before 1778, it became necessary to consider, in the first place, which of them begun to operate with the first settlement of the country by emigrants from Great-Britain.

This event took place in 1665, the date of the charter of Charles the Second; and the colonists brought with them from the mother

country, all such statutes then in force as were applicable to their situation, to the country, and their new way of life. Their infant settlements required a legislation of a character more simple, clear and determinate, than could be obtained by an indiscriminate adoption of the English statutes; a very large proportion of which were suitable to England alone, and could not without evident absurdity be extended to Carolina. Of this description, were the laws relative to the King's prerogative, the rights of the nobility and clergy, the trade and revenue of England, and even many of those sanguinary penal laws, whose policy, questionable even in a rich, commercial and populous country, must be ill adapted to the condition of a few agriculturalists, inhabiting a wilderness.

The next object of enquiry was, what statutes were extended to the colony after the date of the charter, either by the terms of the statutes themselves, and adopted here, or were enforced by legislative acts of the Proprietary, Regal or State Governments.

The charter to the lords proprietors invested them with the power of enacting laws with the assent of the freemen; but what was the course of proprietary legislation for the first fifty years after the settlement of the colony, there are no accessible means of ascertaining. In 1715, the date of the first acts which are extant, the legislature avow that it is often disputed how far the laws of England are in force in the colony; and to put an end to the doubts upon the subject, they deduce from the words of the charter, what perhaps would have more clearly resulted from the general principles of colonization, that the laws of England are the laws of the colony, so far as they are "compatible with our way of living and trade." But they go further, and adopt many statutes by general description, passed both before and after the settlement of the colony, which would not otherwise have been in force, either in consequence of any general principle, or as the necessary construction of the charter. Some of these were abrogated by the revolution, others became merged in the declaration of rights, which secured the privileges of the people in a more enlarged and effectual manner; and the residue have been superseded by laws, providing for the same subjects. There is one statute, however, passed after the date of the charter, which was adopted in 1715, under the designation of those which provided for the privileges of the people, which still retains its authority to a certain degree. The statute adverted to is the 31st Charles II, chapter 2nd, commonly called the *habeas corpus* act. Although the immunity of the subject from unjust imprisonment is proclaimed by magna-charta and the petition of right, 3 Car. I. c. 1, and that of the citizen is still more strongly fortified by the declaration of rights, yet, with the exception of the *habeas corpus* act, there is neither statute nor act of Assembly which prescribes and enforces the method of obtain-

ing the writ, and regulates the details of redress. There are many parts of this statute which are inapplicable to this state, but the substantial provisions of it are so important towards the effectual security of the liberty of the citizen, that it might be thought necessary by the legislature to modify and re-enact it.

Some other statutes passed posterior to the charter, are also now in force in this state, either because they were enforced in 1715, or at some later period, and are not incompatible with the constitution, and have not been repealed or otherwise provided for; or because they were originally made to extend to the state, and have been practically adopted. Of the former description, are the statutes for the amendment of the law; of the latter, are the 5th George II, c. 7, "An act for the more easy recovery of debts in his Majesty's plantations and colonies in America," of which the fourth section is in force; and the 12th George III, ch. 20, "An act for the more effectual proceeding against persons standing mute on their arraignment for felony or piracy."

The Commissioners are apprehensive that a detailed exposition of the reasons for inserting or omitting each particular statute, might be deemed tedious or unprofitable, but so far as the subject is susceptible of a general analysis, the result of the whole is, that when any British statute, passed between the years 1225, the earliest of the British statutes, and 1665, the date of the second charter of Charles II, to the proprietors of Carolina, in the seventeenth year of his reign, both inclusive, is not contained in the list, the reasons are, either,

1. Because it was unsuited to the condition of the colonies.
2. The same objects have been provided for, by the legislature of the Proprietary, Regal or State Government.
3. It has been annulled by the change from the Proprietary to the Regal Government, which took place in 1728, or by that from the Regal to the Independent Sovereignty established in 1776.

When any British statute, passed since 1665, is inserted in the list, the reasons are, either,

1. It has been enforced by some legislative act; or,
2. It has been extended by its terms to the colonies and adopted in practice.

The whole work is most respectfully submitted under the hope, that such imperfections as may be discovered in it, may meet with the candor and indulgence, which its intrinsic difficulty seems to bespeak.

H. POTTER,
J. L. TAYLOR,
B. YANCEY.

November 19, 1819.

PREFACE.

THE general design of the following Work is, perhaps, sufficiently illustrated by the preceding Report of the Commissioners who formed it; and, in the publication, it has been my constant care to conform as much as possible to the letter of the plan.

A sincere desire to render the Statute-Book acceptable to the Legislature and useful to that community for which it was particularly designed, has been the limit of my ambition. How far my humble efforts may meet the approbation or indulgence of a generous public is more than I can tell.

That there are errors in the execution of the work is cause of regret but not of surprise; for errors are continually found in works less difficult, and from hands more experienced. Whether the quantum of inaccuracies in these volumes is greater than usual with us, the reader must determine. The errata, as far as have been noticed, will be found at the end of the 2nd volume.

The extraordinary delay in the printing of this Revisal is to be ascribed, principally, to the difficulty of procuring, in due time, proper hands and materials for carrying on the business expeditiously. The Edition is large, and it required a considerable capital to make rapid progress with it. By the terms of the contract, the work was to be completed by the first of January last; but the declining health of the contractor and the embarrassments already noticed, so retarded his operations, that in November, when he sold out to the present proprietor, he had printed but little more than one-third of it.

This unexpected delay, however, has enabled me to add, by way of Appendix, the acts of 1820. These have their proper references back to former acts, and the Index embraces the whole; but it will be seen that references from former acts to those of 1820, were impossible, since the former were in press long before the latter were enacted. The references are to years, chapters and sections; and where the Laws of the United States are referred to, the last Edition is intended.

H. POTTER.

Raleigh, 1st October, 1821.

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THE
SECOND CHARTER
GRANTED
BY KING CHARLES THE SECOND,
TO THE
PROPRIETORS OF CAROLINA,

DATED THE 30TH DAY OF JUNE, IN THE 17TH YEAR OF
HIS REIGN, A. D. 1667.

CHARLES the second, by the grace of God, of Great-Britain, France and Ireland, King, defender of the faith, &c. WHEREAS, by our letters patents, bearing date the twenty-fourth day of March, in the fifteenth year of our reign, we were graciously pleased to grant unto our right trusty and right well-beloved cousin and counsellor Edward earl of Clarendon, our high chancellor of England; our right trusty and entirely beloved cousin and counsellor George duke of Albemarle, master of our horse; our right trusty and well-beloved William now earl of Craven; our right trusty and well-beloved counsellor John lord Berkeley; our right trusty and well-beloved counsellor Anthony lord Ashley, chancellor of our exchequer; our right trusty and well-beloved counsellor sir Geo. Carteret, knight and baronet, vice-chancellor of our household; our right trusty and well-beloved sir John Colleton, knight and baronet; and sir William Berkeley, knight; all that province, territory, or tract of ground, called Carolina, situate, lying and being within our dominions of America; extending from the north end of the island called Luke-Island, which lieth in the southern Vir-

Former letters patent of Carolina.

Within 31 &
36 degrees of
N. latitude
and west to
the south
sea.

ginia seas, and within thirty-six degrees of north latitude : and to the west, as far as the south-seas ; and so respectively as far as the river of Matthias, which bordereth upon the coast of Florida, and within thirty-one degrees of northern latitude ; and so west, in a direct line, as far as the south-seas aforesaid.

Bounds enlarged so as
to extend
from 29° to
36° 30' N.
lat.

Now know ye, That we, at the humble request of the said grantees, in the aforesaid letters patents named, and as a further mark of our especial favour to them, we are graciously pleased to enlarge our said grant unto them, according to the bounds and limits hereafter specified, and in favour to the pious and noble purpose of the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John lord Berkeley, Anthony lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, their heirs and assigns, all that province, territory or tract of land, situate, lying and being within our dominions of America aforesaid ; extending north and eastward, as far as the north end of Currituck river or inlet, upon a strait westerly line to Wyonoak creek, which lies within or about the degrees of thirty-six and thirty minutes, northern latitude ; and so west, in a direct line, as far as the south-seas ; and south and westward, as far as the degrees of twenty-nine, inclusive, of northern latitude ; and so west, in a direct line, as far as the south-seas ; together with all and singular the ports, harbours, bays, rivers and inlets, belonging unto the province or territory aforesaid : and also, all the soils, lands, fields, woods, mountains, fens, lakes, rivers, bays and islets, situate or being within the bounds or limits last before mentioned ; with the fishings of all sorts of fish, whales, sturgeons, and all other royal fish, in the sea, bays, islets and rivers, within the premises, and the fish therein taken, together with the royalty of the sea upon the coast within the limits aforesaid ; and moreover all veins, mines and quarries, as well discovered as not discovered, of gold, silver, gems and precious stones, metal, or any other thing, found, or to be found, within the province, territory, islets and limits aforesaid : and furthermore, the patronage and advowsons of all the churches and chapels, which, as Christian religion shall increase within the province, territory, isles and limits aforesaid, shall happen hereafter to be erected ; together with li-

cense and power to build and found churches, chapels and oratories, in convenient and fit places, within the said bounds and limits; and to cause them to be dedicated and consecrated, according to the ecclesiastical laws of our kingdom of England; together with all and singular the like and as ample rights, jurisdictions, privileges, prerogatives, royalties, liberties, immunities, and franchises of what kind soever, within the territory, isles, islets and limits aforesaid: to have, hold, use, exercise, and enjoy the same, as amply, fully and in as ample manner, as any Bishop of Durham, in our kingdom of England, ever heretofore had, held, used, or enjoyed, or of right ought or could have, use, or enjoy: and then the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John lord Berkeley, Anthony lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, their heirs and assigns, we do, by these presents, for us, our heirs and successors, make, create, and constitute, the true and absolute lords and proprietors of the said province or territory, and of all other the premises; saving always the faith, allegiance, and sovereign dominion, due to us, our heirs and successors, for the same: to hold, possess, and enjoy the said province, territory, islets, and all and singular other the premises, to them the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John lord Berkeley, Anthony lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, their heirs and assigns forever; to be holden of us, our heirs and successors, as of our manor of East-Greenwich, in Kent, in free and common socage, and not in capite, or by knight's service: yielding and paying, yearly, to us, our heirs and successors, for the same, the fourth part of all gold and silver ore, which, within the limits hereby granted, shall, from time to time, happen to be found, over and besides the yearly rent of twenty marks, and the fourth part of the gold and silver ore, in and by the said written letters patent reserved and payable.

To hold and enjoy as amply as any Bishop of Durham.

To be held of the king as of the manor of E. Greenwich, in free and common socage.

And that the province or territory hereby granted and described, may be dignified with as large tythes and privileges, as any other parts of our dominions and territories in that region; Know ye, That we, of our further grace, certain knowledge, and mere motion, have thought

THE PROPRIETORS' SECOND CHARTER

fit to annex the same tract of ground or territory unto the same province of Carolina; and out of the fulness of our royal power and prerogative, we do, for us, our heirs and successors, annex and unite the same to the said province of Carolina.

And forasmuch as we have made and ordained the aforesaid Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John lord Berkeley, Anthony lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, their heirs and assigns, the true lords and proprietors of all the province or territory aforesaid; Know ye therefore moreover, That we, reposing especial trust and confidence in their fidelity, wisdom, justice, and provident circumspection, for us, our heirs and successors, do grant full and absolute power, by virtue of these presents, to them the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John lord Berkeley, Anthony lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, their heirs and assigns, for the good and happy government of the said whole province or territory, full power and authority, to erect, constitute, and make several counties, baronies, and colonies, of and within the said provinces, territories, lands, and hereditaments, in and by the said letters patents, granted, or mentioned to be granted, as aforesaid, with several and distinct jurisdictions, powers, liberties, and privileges: and also, to ordain, make, and enact, and under their seals, to publish any laws and constitutions whatsoever, either appertaining to the public state of the whole province or territory, or of any distinct or particular county, barony, or colony, or of or within the same, or to the private utility of particular persons, according to their best directions, by and with the advice, assent and approbation, of the freemen of the said province or territory, or of the freemen of the county, barony, or colony, for which such law or constitution shall be made, or the greater part of them, or of their delegates or deputies, whom, for enacting of the said laws, when, and as often as need shall require, we will, that the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John lord Berkeley, Anthony lord Ashley, sir George Carteret, sir John Colleton, and sir Wil-

Lords proprietors have power to erect counties, &c.

To pass laws with the assent of the freemen.

liam Berkeley, and their heirs or assigns, shall, from time to time, assemble in such manner and form as to them shall seem best; and the same laws duly to execute, upon all people within the said province or territory, county, baronny, or colony, or the limits thereof, for the time being, which shall be constituted, under the power, and government of them or any of them, either sailing towards the said province, or territory of Carolina, or returning from thence towards England, or any other of our, or foreign dominions, by imposition of penalties, imprisonment, or any other punishment; yea, if it shall be needful, and the quality of the offence require it, by taking away member and life, either by them the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John lord Berkeley, Anthony lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, and their heirs, or by them, or their deputies, lieutenants, judges, justices, magistrates, or officers, whatsoever, as well within the said province, as at sea, in such manner and form as unto the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John Lord Berkeley, Anthony Lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, and their heirs, shall seem most convenient: and also, to remit, release, pardon, and abolish, whether before judgment or after, all crimes and offences whatsoever against the said laws; and to do all and every thing and things, which, unto the compleat establishment of justice, unto courts, sessions, and forms of judicature, and manners of proceeding therein, do belong, although in these presents express mention is not made thereof; and by judges to him or them delegated, to award process, hold pleas, and determine, in all the said courts and places of judicature, all actions, suits, and causes whatsoever, as well criminal as civil, real, mixt, personal, or of any other kind or nature whatsoever: which laws so as aforesaid to be published, our pleasure is, and we do enjoin, require, and command, shall be absolutely firm and available in law; and that all the liege people of us, our heirs and successors, within the said province or territory, do observe and keep the same inviolably in those parts, so far as they concern them, under the pains and penalties therein expressed, or to be expressed: *Pro-*

To call assemblies.

To grant pardons, &c.

By Judges to hold pleas, &c.

Laws to be
consonant to
reason and as
near as may
be to the
laws of Eng-
land.

vided nevertheless, That the said laws be consonant to reason, and as near as may be conveniently, agreeable to the laws and customs of this our realm of England.

Till assem-
blies called,
proprietors
to make the
laws.

And because such assemblies of freeholders cannot be so suddenly called as there may be occasion to require the same, we do therefore, by these presents, give and grant unto the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John lord Berkeley, Anthony lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, their heirs and assigns, by themselves, or their magistrates, in that behalf lawfully authorised, full power and authority, from time to time, to make and ordain fit and wholesome orders and ordinances within the province or territory aforesaid, or any county, borony, or province, within the same, to be kept and observed, as well for the keeping of the peace, as for the better government of the people there abiding, and to publish the same to all whom it may concern: which ordinances we do, by these presents, straitly charge and command to be inviolably observed within the same province, counties, territories, baronies and provinces, under the penalties therein expressed; so as such ordinances be reasonable, and not repugnant or contrary, but as near as may be, agreeable to the laws and statutes of this our kingdom of England; and so as the same ordinances do not extend to the binding, charging, or taking away the right or interest of any person or persons, in their freehold, goods, or chattels, whatsoever.

License for
liege people
to settle.

And to the end the said province or territory may be the more happily increased, by the multitude of people resorting thither, and may likewise be the more strongly defended from the incursions of savages, and other enemies, pirates and robbers: therefore, we, for us, our heirs and successors, do give and grant, by these presents, full power, license and liberty, unto all the liege people of us, our heirs and successors, in our kingdom of England, and elsewhere, within any other our dominions, islands, colonies, or plantations, (excepting those who shall be especially forbidden) to transport themselves and families into the said province or territory, with convenient shipping and sitting provision; and there to settle themselves, dwell, and inhabit: any law, act, statute, ordinance, or other thing, to the contrary, notwithstanding.

And we will also, and of our especial grace, for us, our heirs and successors, do straitly enjoin, ordain, constitute, and command, that the said province and territory shall be of our allegiance; and that all and singular the subjects and liege people of us, our heirs and successors, transported, or to be transported into the said province, and the children of them, and such as shall descend from them there born, or hereafter to be born, be, and shall be denizens and lieges of us, our heirs and successors, of this our kingdom of England, and be in all things, held, treated, and reputed, as the liege faithful people of us, our heirs and successors, born within this our said kingdom, or any other of our dominions; and may inherit or otherwise purchase and receive, take, hold, buy and possess, any lands, tenements, or hereditaments, within the said places, and them may occupy and enjoy, sell, alien, and bequeath; as likewise, all liberties, franchises, and privileges, of this our kingdom, and of other our dominions aforesaid, may freely and quietly have, possess, and enjoy, as our liege people, born within the same, without the molestation, vexation, trouble, or grievance, of us, our heirs and successors: any act, statute, ordinance, or provision, to the contrary, notwithstanding.

The subjects
and their
children to
be denizens
and lieges.

And furthermore, that our subjects of this our said kingdom of England, and other our dominions, may be the rather encouraged to undertake this expedition, with ready and cheerful means; Know ye, That we, of our especial grace, certain knowledge, and mere motion, do give and grant, by virtue of these presents, as well to the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John lord Berkeley, Anthony lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, and their heirs, as unto all others as shall, from time to time, repair unto the said province or territory, with a purpose to inhabit there, or to trade with the natives thereof; full liberty and license, to lade and freight, in every port whatsoever, of us, our heirs and successors, and into the said province of Carolina, by them, their servants and assigns, to transport all and singular their goods, wares and merchandises: as likewise all sorts of grain whatsoever, and any other thing whatsoever, necessary for their food and clothing, not prohibited by the laws and statutes of our kingdom and

License to
transport
goods, pay-
ing customs
and duties.

dominions, to be carried out of the same, without any let or molestation of us, our heirs and successors, or of any other our officers or ministers whatsoever; saving also unto us, our heirs and successors, the customs, and other duties and payments, due for the said wares and merchandises, according to the several rates of the places from whence the same shall be transported.

To importin-
to England,
&c.

We will also, and by these presents, for us, our heirs and successors, do give and grant license by this our charter, unto the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John lord Berkeley, Anthony lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, and their heirs and assigns, and to all the inhabitants and dwellers in the province or territory aforesaid, both present and to come, full power and absolute authority, to import or unlade, by themselves or their servants, factors, or assigns, all merchandises and goods whatsoever that shall arise of the fruits and commodities of the said province or territory, either by land or sea, into any the ports of us, our heirs and successors, in our kingdom of England, Scotland, or Ireland, or otherwise to dispose of the said goods in the said ports; and, if need be, within one year next after the unlading, to lade the said merchandises and goods again into the same or other ships; and to export the same into any other countries, either of our dominions or foreign, being in amity with us, our heirs and successors, so as they pay such customs, subsidies and other duties, for the same, to us, our heirs and successors, as the rest of our subjects of this our kingdom, for the time being, shall be bound to pay; beyond which, we will not, that the inhabitants of the said province or territory shall be any ways charged: *Provided nevertheless*, and our will and pleasure is, and we have further, for the considerations aforesaid, of our especial grace, certain knowledge, and mere motion, given and granted, and by these presents, for us, our heirs and successors, do give and grant unto the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John lord Berkeley, Anthony lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, their heirs and assigns, full and free license, power and authority, at any time or times, from and after the feast of St. Michael the Arch-

angel, which shall be in the year of our Lord Christ one thousand six hundred and sixty-seven, as well to import and bring into any of our dominions, from the said province of Carolina, or any part thereof, the several goods hereinafter mentioned; that is to say, silks, wines, raisins, capers, wax, almonds, oil, olives, without paying or answering to us, our heirs and successors, any custom, impost, or other duty, for or in respect thereof, for and during the term and space of seven years, to commence and be accounted from and after the importation of four tons of any of the said goods, in any one bottom, ship, or vessel, from the said province or territory, into any of our dominions; as also, to export, and carry out of any of our dominions, into the said province or territory, custom free, all sorts of tools which shall be useful or necessary for the planters there, in the accommodation and improvement of the premises: any thing before in these presents contained, or any law, act, statute, prohibition, or other matter or thing, heretofore had, made, enacted, or provided, in any wise notwithstanding.

And furthermore, of our more ample and especial grace, certain knowledge, and mere motion, we do, for us, our heirs and successors, grant unto the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John Lord Berkeley, Anthony Lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, their heirs and assigns, full and absolute power and authority, to make, erect, and constitute, within the said province or territory, and the isles and islets aforesaid, such and so many sea-ports, harbours, creeks, and other places, for discharge and unlading of goods and merchandises, out of ships, boats and other vessels, and for lading of them, in such and so many places, with such jurisdictions, privileges and franchises, unto the said ports belonging, as to them shall seem most expedient, and that all and singular the ships, boats and other vessels, which shall come for merchandises and trade into the said province or territory, or shall depart out of the same, shall be laden and unladen at such ports only as shall be erected and constituted by the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John Lord Berkeley, Anthony Lord Ashley, sir George Carteret, sir John Colleton, and sir William

To erect sea-ports, &c.

Berkeley, their heirs and assigns, and not elsewhere : any use, custom, or thing, to the contrary notwithstanding.

The Lords
Proprietors
may have the
customs, &c.

And we do further will, appoint, and ordain, and by these presents, for us, our heirs and successors, do grant unto the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John Lord Berkeley, Anthony Lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, and their heirs and assigns, that they the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John Lord Berkeley, Anthony Lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, their heirs and assigns, may, from time to time, forever, have and enjoy the customs and subsidies, in the ports, harbours, creeks, and other places within the province aforesaid, payable for the goods, wares and merchandises there laded, or to be laded or unladed ; the said customs to be reasonably assessed, upon any occasion, by themselves, and by and with the consent of the free people, or the greater part of them, as aforesaid ; to whom we give power, by these presents, for us, our heirs and successors, upon just cause, and in due proportion, to assess and impose the same.

Lords Pro-
prietors have
power to a-
lien to such
as they think
fit, to be held
of them.

And further, of our especial grace, certain knowledge, and mere motion, we have given, granted and confirmed, and by these presents, for us, our heirs and successors, do give, grant and confirm, unto the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John Lord Berkeley, Anthony Lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, their heirs and assigns, full and absolute power, license and authority, that they the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John Lord Berkeley, Anthony Lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, their heirs and assigns, from time to time hereafter, forever, at his and their will and pleasure, may assign, alien, grant, demise, or enfeoff, the premises, or any part or parcel thereof, to him or them that shall be willing to purchase the same, and to such person and persons as they shall think fit ; to have and to hold to them, the said person or persons, their heirs and assigns,

in fee-simple, or in fee-tail, or for term of life or lives, or years; to be held of them the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John Lord Berkeley, Anthony Lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, their heirs and assigns, by such rents, services and customs, as shall seem fit to them the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John Lord Berkeley, Anthony Lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, their heirs and assigns, and not of us our heirs and successors: and to the same person and persons, and to all and every of them, we do give and grant, by these presents, for us, our heirs and successors, license, authority and power, that such person or persons may have and take the premises, or any part thereof, of the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John lord Berkeley, Anthony lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, their heirs and assigns, and the same to hold to themselves, their heirs and assigns, in what estate of inheritance soever, in fee-simple, or fee-tail or otherwise, as to them the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John lord Berkeley, Anthony lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, their heirs or assigns, shall seem expedient; the statute in the parliament of Edward, son of King Henry, heretofore king of England, our predecessor, commonly called the statute of *quia emptores terrarum*, or any other statute, act, ordinance, use, law, custom, or any other matter, cause or thing, heretofore published or provided to the contrary, in any-wise notwithstanding.

License to
such to have
and take.

The statute
quia emptores.

And because many persons, born and inhabiting in the said province, for their deserts and services, may expect and be capable of marks of honor and favor, which, in respect of the great distance, cannot be conveniently conferred by us; our will and pleasure therefore is, and we do by these presents, give and grant unto the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John lord Berkeley, Anthony lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, and their heirs and assigns, full power

To grant ti-
tles of honor

and authority, to give and confer unto and upon such of the inhabitants of the said province or territory, as they shall think do or shall merit the same, such marks of favor and titles of honor, as they shall think fit; so as their titles or honors be not the same as are enjoyed by or conferred upon any of the subjects of this our kingdom of England.

Build Forts,
&c.

And further also, we do, by these presents, for us, our heirs and successors, give and grant license to the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John lord Berkeley, Anthony lord Ashley, Sir George Carteret, Sir John Colleton, and sir William Berkeley, and their heirs and assigns, full power, liberty and license, to erect, raise and build, within the said province and places aforesaid, or any part or parts thereof, such and so many forts, fortresses, castles, cities, boroughs, towns, villages, and other fortifications whatsoever; and the same, or any of them, to fortify and furnish with ordnance, powder, shot, armour, and all other weapons, ammunition, and habiliments of war, both defensive and offensive, as shall be thought fit and convenient, for the safety and welfare of the said province and places, or any part thereof; and the same, or any of them, from time to time, as occasion shall require, to dismantle, disfurnish, demolish and pull down: and also to place, constitute and appoint, in or over all or any of the said castle, forts, fortifications, cities, towns, and places aforesaid, Governors, Deputy-Governors, Magistrates, Sheriffs, and other officers, civil and military, as to them shall seem meet: and to the said cities, bo-

Grant char-
ters of incor-
poration.

roughs, towns, villages, or any other place or places, within the said province or territory, to grant letters or charters of incorporation, with all liberties, franchises, and privileges, requisite or usual, or to or within this our kingdom of England granted or belonging; and in the same cities, boroughs, towns, and other places, to constitute, erect and appoint such and so many markets, marts, and fairs, as shall, in that behalf, be thought fit and necessary: and further also, to erect and make in the province or territory aforesaid, or any part thereof, so many manors, with such signories as to them shall seem meet and convenient; and in every of the same manors to have and to hold a Court-Baron, with all things

Erect mar-
kets and ma-
nors.

whatsoever which to a Court-Baron do belong ; and to have and to hold views of frank-pledge and court-leets, for the conservation of the peace and better government of those parts, with such limits, jurisdictions and precincts, as by the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John lord Berkeley, Anthony lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, or their heirs, shall be appointed for that purpose, with all things whatsoever which to a court-leet, or view of frank-pledge, do belong ; the same courts to be holden by stewards, to be deputed and authorised by the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John lord Berkeley, Anthony lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, or their heirs, by the lords of the manors and leets, for the time being, when the same shall be erected.

And because that in so remote a country, and situate among so many barbarous nations, the invasions of savages and other enemies, pirates and robbers, may probably be feared ; therefore, we have given, and for us, our heirs and successors, do give power by these presents, unto the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John lord Berkeley, Anthony lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, their heirs or assigns, by themselves, or their captains, or other officers, to levy, muster, and train up all sorts of men, of what condition soever, or wheresoever born, whether in the said province, or elsewhere, for the time being ; and to make war, and pursue the enemies aforesaid, as well by sea, as by land ; yea, even without the limits of the said province, and, by God's assistance, to vanquish and take them ; and being taken, to put them to death, by the law of war, and to save them at their pleasure, and to do all and every other thing, which to the charge and office of a captain-general of an army, hath had the same.

To muster
all, and to
make war,
&c.

Also, our will and pleasure is, and by this our charter, we do give and grant unto the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John lord Berkeley, Anthony lord Ashley, sir George Carteret, sir John Colleton, and sir William

To exercise
martial law.

Berkeley, their heirs and assigns, full power, liberty, and authority, in case of rebellion, tumult, or sedition, (if any should happen, which God forbid) either upon the land within the province aforesaid, or upon the main sea, in making a voyage thither, or returning from thence, by him and themselves, their captains, deputies, or officers, to be authorised under his or their seals, for that purpose ; to whom also, for us, our heirs and successors, we do give and grant, by these presents, full power and authority, to exercise martial law against any mutinous and seditious persons of these parts ; such as shall refuse to submit themselves to their government, or shall refuse to serve in the war, or shall fly to the enemy, or forsake their colours or ensigns, or be loiterers, or stragglers, or otherwise offending against law, custom, or military discipline ; as freely and in as ample manner and form, as any captain-general of an army, by virtue of his office, might or hath accustomed to use the same.

To be sepa-
rate from all
other colo-
nies.

Not to an-
swer else-
where than
in England.

And our further pleasure is, and by these presents, for us, our heirs and successors, we do grant unto the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John lord Berkeley, Anthony lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, their heirs and assigns, and to the tenants and inhabitants of the said province or territory, both present and to come, and to every of them, that the said province or territory, and the tenants and inhabitants thereof, shall not, from henceforth, be held or reputed any member or part of any colony whatsoever in America, or elsewhere, now transported or made, or hereafter to be transported or made ; nor shall be depending on, or subject to their government in any thing, but be absolutely separated and divided from the same ; and our pleasure is, by these presents, that they be separated, and that they be subject immediately to our crown of England, as depending thereof, forever : and that the inhabitants of the said province or territory, nor any of them, shall, at any time hereafter, be compelled, or compellable, or be any ways subject or liable to appear or answer to any matter, suit, cause or plaint whatsoever, out of the province or territory aforesaid, in any other of our islands, colonies, or dominions in America, or elsewhere, other than in our realm of England, and dominions of Wales.

And because it may happen that some of the people and inhabitants of the said province cannot, in their private opinions, conform to the public exercise of religion, according to the liturgy, forms, and ceremonies of the church of England, or take and subscribe the oaths and articles made and established in that behalf; and for that the same, by reason of the remote distances of those places, will, as we hope, be no breach of the unity and conformity established in this nation; our will and pleasure therefore is, and we do, by these presents, for us, our heirs and successors, give and grant unto the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John lord Berkeley, Anthony lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, their heirs and assigns, full and free license, liberty, and authority, by such ways and means as they shall think fit, to give and grant unto such person and persons, inhabiting and being within the said province or territory, hereby, or by the said recited letters patents mentioned to be granted as aforesaid, or any part thereof, such indulgences and dispensations, in that behalf, for and during such time and times, and with such limitations and restrictions, as they the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John lord Berkeley, Anthony lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, their heirs or assigns, shall, in their discretion, think fit and reasonable: and that no person or persons unto whom such liberty shall be given, shall be any way molested, punished, disquieted, or called in question, for any differences in opinion, or practice in matters of religious concerns, who do not actually disturb the civil peace of the province, county or colony, that they shall make their abode in: but all and every such person and persons may, from time to time, and at all times, freely and quietly have and enjoy his and their judgments and consciences, in matters of religion, throughout all the said province or colony, they behaving themselves peaceably, and not using this liberty to licentiousness, nor to the civil injury, or outward disturbance of others: any law, statute, or clause, contained or to be contained, usage or custom of our realm of England, to the contrary hereof, in any wise, notwithstanding.

Indulgence
to non-con-
formists.

Interpreta-
tion to be
made most
favorable to
the lords pro-
prietors.

And in case it shall happen, that any doubts or questions shall arise, concerning the true sense and understanding of any word, clause, or sentence contained in this our present charter; we will, ordain, and command, that in all times, and in all things, such interpretations be made thereof, and allowed in all and every of our courts whatsoever, as lawfully may be adjudged most advantageous and favorable to the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John lord Berkeley, Anthony lord Aslley, sir George Carteret, sir John Colleton, and sir William Berkeley, their heirs and assigns, although express mention, &c.

WITNESS ourself, at Westminster, the thirtieth day of June, in the seventeenth year of our reign.

PER IPSUM REGEM.

GREAT DEED OF GRANT.

GEORGE duke of Albemarle, master of his majesty's horse; Edward earl of Clarendon; William earl of Craven; John lord Berkeley; Anthony lord Ashley, Chancellor of the Exchequer; sir George Carteret, Vice-Chamberlain of his majesty's household; sir William Berkeley, Knight; and sir John Colleton, Baronet; the true and absolute Lords proprietors of all the province of Carolina.

To our trusty and well-beloved SAMUEL STEPHENS, Esq. Governor of our county of Albemarle, and the isles and islets within ten leagues thereof; and to our trusty and well-beloved Counsellors and Assistants to our said Governor: GREETING.

WHEREAS we have received a petition from the Grand Assembly of our county of Albemarle, praying, that the inhabitants of the said county may hold their lands upon the same terms and conditions that the inhabitants of Virginia hold theirs; and forasmuch as the said county doth border upon Virginia, and is much of the same nature, we are content, and do grant, that the inhabitants of the said county do hold their lands of us, the lords proprietors, upon the same terms and conditions that the inhabitants of Virginia hold theirs: WHEREFORE, be it known unto all men, by these presents, That we, the said lords and absolute proprietors of the county within the province aforesaid, have given, granted, and by these presents, do give and grant, full power and authority unto you, the said Governor, by and with the consent of our council, or the major part thereof, or to any Governor for the time being, or that shall hereafter be by us appointed, full power and authority, by and with the consent of our

GREAT DEED OF GRANT.

Lands to be
held upon
the same
terms they
are in Vir-
ginia.

council then being, or the major part thereof, to convey and grant such proportions of land, as, by our instructions and concessions, annexed to our commission, bearing date in October, Anno Dom. 1667, we have appointed, to such persons as shall come into our said county to plant or inhabit; to be held of us, our heirs and assigns, upon the same terms and conditions, that land is at present usually granted in Virginia; any thing in our instructions and concessions aforesaid to the contrary, notwithstanding: and we do hereby declare and consent, that the warrant to the surveyor for the laying out of said land, and the return thereon, being registered, and also the grant of you our said governor and council, that shall be where such land is due, having the seal of the country affixed to it, and signed by yourself, and major part of our council, for the time being, being registered, shall be good and effectual in law, for the enjoyment of the said land or plantation, and all the benefits and profits of, and in the same, (except one half of all gold and silver mines) to the party to whom it is granted, his heirs and assigns, forever, he or they performing the conditions aforesaid.

Given under our hands, and great seal of our province, the first of May, Anno Dom. 1668.

ALBEMARLE,
BERKELEY,
CARTERET,
CRAVEN,
ASHLEY,
COLLETON.

GRANT
 FROM
KING GEORGE THE SECOND,
TO JOHN LORD CARTERET,

AFTERWARDS
EARL GRANVILLE.

THIS INDENTURE made the seventeenth day of September, in the 18th year of the reign of our sovereign lord George the second, by the grace of God, of Great Britain, France and Ireland, king, defender of the faith, &c. and in the year of our lord one thousand seven hundred and forty-four, between our said sovereign lord the king's most excellent majesty of the one part, and the right honourable John lord Carteret of the other part.

Dated the
17th Sep-
tember,
1744.

WHEREAS his late majesty king Charles the second, by his letters patent, under the great seal of England, bearing date at Westminster the twenty-fourth day of March, in the fifteenth year of his reign, did grant and confirm unto Edward then earl of Clarendon, George then duke of Albemarle, William then lord Craven, John then lord Berkeley, Anthony then lord Ashley, sir George Carteret knight and baronet, sir William Berkeley, and sir John Colleton knight and baronet, all since deceased, their heirs and assigns, all that territory or tract of ground situate lying and being within his said late majesty's dominions in America, extending from the north end of the island, called Lucker island, which lieth in the southern Virginian seas, and within six and thirty degrees of the northern latitude, and to the west as far as the south seas,

Recital of the
charter of the
15th of
Charles II.

and so southerly as far as the river Saint Matthias, which bordereth upon the coast of Florida, and within one and thirty degrees of northern latitude, and so west in a direct line as far as the south seas aforesaid; together with all and singular ports, harbours, bays, rivers, isles and islets, belonging unto the country aforesaid; and also, all the soil, lands, fields, woods, mountains, farms, lakes, rivers, bays, and islets, situate or being within the bounds and limits aforesaid; with the fishing of all sorts of fish, whales and sturgeon, and all other royal fishes, in the sea, bays, islets and rivers within the premises; and the fish therein taken. And moreover, all veins, mines, quarries, as well discovered as not discovered, of gold, silver, gems and precious stones, and all other whatsoever, whether of stones, metals, or any other thing whatsoever, found or to be found within the country, islets and limits aforesaid; and also all the patronage and advowsons of all churches and chapels, which, as christian religion should increase within the countries, isles, islets, and limits aforesaid, should happen thereafter to be erected, together with license and power to build and found churches, chapels, and oratories in convenient and fit places within the said bounds and limits, and to cause them to be dedicated and consecrated according to the ecclesiastical laws of the kingdom of England, together with all and singular the like, and as ample rights, jurisdictions, privileges, prerogatives, royalties, liberties, immunities and franchises of what kind soever within the country, isles, islets, and limits aforesaid. To have, use, exercise and enjoy, and in as ample a manner as any bishop of Durham in the kingdom of England ever theretofore had, held, used or enjoyed, or of right ought or could have, use or enjoy. And his said late majesty did thereby for himself, his heirs and successors, make, create and constitute the said Edward earl of Clarendon, George duke of Albemarle, William lord Craven, John lord Berkeley, Anthony lord Ashley, sir George Carteret, sir William Berkeley, and sir John Colleton, their heirs and assigns, the true and absolute lords and proprietors of the country aforesaid, and all other the premises, (saving always the faith, allegiance and sovereign dominion due to his said majesty for the same) to have, hold, possess and enjoy the said country, isles, islets, and all other the premises, to them the

said Edward earl of Clarendon, George duke of Albemarle, William lord Craven, John lord Berkeley, Anthony lord Ashley, sir George Carteret, sir Wm. Berkeley, and sir John Colleton, their heirs and assigns, forever, to be holden of his said late majesty, his heirs and successors, as of his manor of East-Greenwich in the county of Kent, in free and common socage, and not in capite or by knight's service, yielding and paying to his said majesty, his heirs and successors, for the same, the fourth part of all gold and silver ore within the limits aforesaid, and the yearly rent of twenty marks.

And whereas his said late majesty, king Charles the second, by other letters patent under the great seal of England, bearing date the thirtieth day of June, in the seventeenth year of his reign, reciting the letters patent herein first recited, did grant unto the said Edward earl of Clarendon, George duke of Albemarle, William lord Craven then earl of Craven, John lord Berkeley, Anthony lord Ashley, Sir George Carteret, sir John Colleton, and sir William Berkeley, their heirs and assigns, all that province, territory and tract of ground situate, lying and being within his late majesty's dominions of America, extending north and eastward as far as the north end of the Caralituck river or gullet upon a strait westerly line to Wyanoake creek, which lies within or about the degrees of thirty six and thirty minutes northern latitude, and so west in a direct line so far as the south seas, and south and westward as far as the degrees of twenty nine, inclusive, northern latitude, and so west in a direct line to the south seas, together with all and singular the ports, harbours, bays, rivers and islets belonging unto the province or territory aforesaid, and also all the soil, lands, fields, woods, farms, lakes, rivers, bays and islets, situate or being within the bounds or limits last before mentioned, with fishing of all sorts of fish, whales, sturgeons and other royal fishes, in the sea, bays, islets, and rivers within the premises, and the fish therein taken, together with the royalty of the sea upon the coasts within the limits aforesaid, and all veins, mines and quarries as well discovered as not discovered, of gold, silver, gems and precious stones, and all other whatsoever, be it of stone, metals or any other things found or to be found within the premises, territory, islets and limits aforesaid ;

Recital of the
charter of the
17th Charles
II.

—and furthermore the patronages and advowsons of all churches and chapels, which, as christian religion should increase within the province, territory, isles and limits aforesaid, should happen thereafter to be erected, together with license and power to build and found churches, chapels and oratories in convenient places within the said bounds and limits, and to cause them to be dedicated and consecrated according to the ecclesiastical laws of the kingdom of England, together with all and singular the like and as ample rights, jurisdictions, privileges and prerogatives, royalties, liberties, immunities and franchises of what kind soever, within the territory, isles, islets and limits aforesaid. To have, hold, use, exercise and enjoy the same as amply and fully, and in as ample manner as any bishop of Durham in the kingdom of England ever theretofore had, held, used or enjoyed, or of right ought or could have, use or enjoy.

And his said late majesty did thereby for himself, his heirs and successors, make, create, constitute and appoint the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John lord Berkeley, Anthony lord Ashley, sir George Carteret, sir John Colleton and sir William Berkeley, their heirs and assigns, the true and absolute lords proprietors of the said province or territory, and of all other the premises. (saving always the faith, allegiance and sovereign dominion to his said late majesty, his heirs and successors, for the same.) To have, hold, possess and enjoy, the said province, territory, islets, and all and singular other the premises to them the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John lord Berkeley, Anthony lord Ashley, sir George Carteret, sir John Colleton and sir William Berkeley, their heirs and assigns forever. To be holden of his said majesty, his heirs and successors, as of the manor of East-Greenwich aforesaid, in free and common socage, and not in capite or by knight's service, yielding and paying to his said majesty, his heirs and successors, for the same, the fourth part of all gold and silver ore, which, within the limits thereby granted should from time to time happen to be found, over and besides the yearly rent of twenty marks, and the fourth part of the gold and silver ore in and by the said first recited letters patents reserved and payable.

And his said late majesty king Charles the second, did, by the said several letters patents, or one of them, grant to the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John lord Berkeley, Anthony lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, their heirs and assigns, full and absolute power to make and publish laws, either appertaining to the public state of the said provinces, or to the private utility of particular persons, with the assent of the freemen of the said provinces or of their delegates, and for that purpose to assemble them in such manner and form as to them the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John lord Berkeley, Anthony lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, their heirs and assigns should seem best, and the same laws duly to execute on all the people within the said provinces and limits thereof by imposition of penalties, imprisonments or any other punishments, and if mindful, by taking away member or life, either by them the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John lord Berkeley, Anthony lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, their heirs and assigns, or by them or their deputies, lieutenants, judges, justices, magistrates, or officers whatsoever, as well within the said province as at sea, in such manner and form as unto the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John lord Berkeley, Anthony lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, and their heirs shall seem most convenient: also to remit, release, pardon, and abolish, whether before judgment or after, all crimes and offences whatsoever against the said laws. and to do all and every other thing and things which unto the complete establishment of justice, unto court sessions and forms of jurisdiction, and manners of proceedings therein, do belong, although in the said letters patent express mention is not made thereof, and by judges by him or them delegated, to award process, hold pleas, and determine in all the said courts and places of judicature all actions, suits and causes whatsoever, as well criminal as civil, real, mixt, personal, or of any other kind or nature whatsoever; and because such

assemblies of freeholders could not so conveniently be called as there might be occasion to require the same, his said majesty did further grant to the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John lord Berkeley, Anthony lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, their heirs and assigns, by themselves or their magistrates, full power to make and ordain fit ordinances within the said provinces, as well for keeping the peace, as for the better government of the people.

And his majesty did further grant to the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John lord Berkeley, Anthony lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, their heirs and assigns, full power to make and erect within the said provinces and the isles and islets aforesaid, such sea ports, harbours, creeks, and with such jurisdictions, privileges and franchises to them belonging as to them shall seem convenient, and to have and enjoy the customs and subsidies therein payable for goods and merchandizes there laded, to be reasonably assessed by themselves with the consent of the free people there.

And further his said majesty did grant to the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John Lord Berkeley, Anthony lord Ashley, sir George Carteret, sir John Colleton and sir William Berkeley, their heirs and assigns, full power to confer upon the inhabitants of the said province such marks of favour and titles of honour as they should think fit, so as the said titles be not the same as are enjoyed by, or conferred upon any of the subjects of England; and also, power to raise and build forts, castles, cities, boroughs, towns, villages and other fortifications; and furnish the same with all ordnance, powder, shot, armour, and all other weapons, ammunition, habiliments of war, both defensive and offensive, as shall be thought fit and convenient for the safety and welfare of the said province and places, or any part thereof; and to dismantle and demolish the same; and appoint governors, deputy governors, magistrates, sheriffs, and other officers, civil and military; and to the said cities, towns, boroughs, villages, or any other place or places within the said province or territory to grant letters or charters of incorporation,

with all requisite and usual liberties, franchises and privileges, and appoint therein fairs and markets, and to make and erect manors and courts baron, and courts leet for the conservation of the peace and better government of the said provinces; and also, full power to levy, muster, and train all sorts of men, of what condition or wheresoever born within the said provinces, and to make war by land and sea, and to do all and every thing which belongs to the office of a captain-general of an army, and to exercise martial law in as ample a manner as any captain-general of an army, by virtue of his office might or has accustomed to use the same.

And his said majesty did further grant to the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John Lord Berkeley, Anthony Lord Ashley, sir George Carteret, sir John Colleton, and sir William Berkeley, their heirs and assigns, full power from time to time forever, to assign, alien, grant, or enfeoff the premises to such persons as they should think fit, to hold in fee-simple or fee-tail, for term of life or lives or years, to be held of them and their assigns by such rents, services, and customs as shall seem fit to them, and not of his said majesty, his heirs and successors, the statute of *quia emptores terrarum* or any other statute, cause or thing notwithstanding, as in and by the said several recited letters patent, relation being thereunto had, may appear.

And whereas the respective parts, shares, interests and estates of the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John Lord Berkeley, Anthony Lord Ashley, sir John Colleton, and sir William Berkeley, of and in the provinces, territories, islets, hereditaments, and premises, in and by the said several recited letters patent granted and comprised, did come unto and vest in Henry duke of Beaufort, William late lord Craven, James Bertie, Doddington Greville, Henry Bertie, Mary Dawson, Elizabeth Moor, sir John Colleton, Archibald Hutcheson, John Cotton, and Joseph Blake, or some or one of them, and the part, share, interest and estate of the said sir George Carteret of and in the same premises, did come unto and vest in the said John lord Carteret. And whereas the said Henry now duke of Beaufort, William late lord Craven, James Bertie, Henry Bertie, sir John Colleton, and Archibald Hutche-

The rights and interests of the said proprietors vested in others.

Six of the proprietors propose, by petition, to surrender to his majesty their respective shares of the government and soil of the provinces, (except, &c.) for the sum of 2,500*l.* a piece.

Another proprietor proposes to surrender upon the like terms.

Seven of the proprietors estimate the quit rents, &c. and propose to assign them to his majesty for 5,000*l.*

son, who was trustee for the said John Cotton, being six of the lords proprietors of the provinces and territories aforesaid, did by their humble petition to his majesty in council propose to surrender to his majesty their said several and respective shares and interest, not only of the said government, royalties and franchises in and by the said recited letters patent granted, but also all the right and property they had in and to the soil in the aforesaid provinces or territories under the said several recited letters patent or either of them; and also to make an entire surrender to his majesty of their right to all the lands which they hold under the grants made by the said lords proprietors (except as therein excepted) praying that in consideration of such surrender, his majesty would be pleased to direct and cause to be paid to each of them the sum of two thousand five hundred pounds a piece, without any deduction; and Samuel Wragg of London, merchant, did on the behalf and by the direction of the said Joseph Blake propose to surrender and convey to his majesty, his heirs and successors, all the estate, right and interest of the said Joseph Blake in and to the premisses, upon payment of the like sum of two thousand five hundred pounds to the said Joseph Blake without any deduction.

And whereas the said Henry duke of Beaufort, William lord Craven, James Bertie, Henry Bertie, sir John Colleton, and Archibald Hutcheson, who is a trustee for the said John Cotton, laid before a committee of his majesty's most honourable privy council an estimate of all the arrears of quit rents and other rents, and sum and sums of money then due and owing to them and the said Joseph Blake and the said John lord Carteret, which estimate amounted to the sum of nine thousand five hundred pounds; and they the said Henry duke of Beaufort, William lord Craven, James Bertie, Henry Bertie, sir John Colleton, and Archibald Hutcheson, did likewise humbly propose, and the said Samuel Wragg for and on the behalf of the said Joseph Blake did likewise propose, that if his said majesty would please to allow the sum of five thousand pounds for the said arrears (over and above the said several sums of two thousand five hundred pounds to be paid to them respectively) they were willing to assign over to his majesty their right and title to the

said arrears, and all other demands whatsoever which they had or could have upon the farmers, tenants or inhabitants of the provinces or territories aforesaid, or any of them; and which said several proposals his majesty was pleased to accept and agree to.

The several proposals agreed to by his majesty.

And whereas by an act of Parliament made in the second year of his said present majesty's reign, entitled, An Act for establishing an agreement with seven of the lords proprietors of Carolina for the surrender of their title and interest in that province to his majesty, reciting to the effect herein before recited, it was enacted, that all those seven undivided eighth parts, (the whole into eight equal parts or shares to be divided) and all other the part or share, parts or shares, interests and estates of them the said Henry duke of Beaufort, William lord Craven, James Bertie, Doddington Greville, Henry Bertie, Mary Dawson, and Elizabeth Moor, sir John Colleton, Archibald Hutcheson as trustee for the said John Cotton, and Joseph Blake, and each of them, of, and in the aforesaid provinces or territories called Carolina, and all and singular the royalties, franchises, lands, tenements, hereditaments, and premises in and by the said several recited letters patent, or either of them, granted or mentioned, or intended to be granted by his said late majesty king Charles the second, to the said Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John Lord Berkeley, Anthony Lord Ashley, sir George Carteret, sir John Colleton deceased, and sir William Berkeley, their heirs and assigns aforesaid, with their and every of their rights, members, and appurtenances, and also all such powers, liberties, authorities, jurisdictions, pre-eminences, licenses and privileges as they the said Henry duke of Beaufort, William lord Craven, James Bertie, Doddington Greville, Henry Bertie, Mary Dawson and Elizabeth Moor, the present sir John Colleton, the said Archibald Hutcheson, as trustee for the said John Cotton, and Joseph Blake, every or any of them could or might have, hold, use, exercise or enjoy by virtue of or under the said recited letters patent or either of them, (except as therein excepted) and the reversions, remainders, rents, issues and profits of the same parts or shares, baronies, lands, tenements, hereditaments and premises, so as aforesaid proposed and agreed to be surrendered to

An act of parliament to establish the agreement.

The surrendered shares &c. vested in trustees, to convey to his majesty, on payment of 17,500*l.* to be applied as the act directs.

Rights to the quit rents also vested in the king, after payment of the 5,000*l.*

his majesty, and of every part and parcel thereof, should from and after the first day of June in the year of our lord one thousand seven hundred and twenty nine, be vested and settled, and the same were thereby vested and settled, in and upon the said Edward Bertie, Samuel Horsey, Henry Smith and Alexius Clayton, and their heirs, to the use of them their heirs and assigns freed and discharged, of and from all estates, uses, trusts, intails, reversions, remainders, limitations, charges and incumbrances whatsoever, upon trust, and to the intent that they the said Edward Bertie, Samuel Horsey, Henry Smith and Alexius Clayton, and the survivors and survivor of them, and the heirs of such survivor, upon payment by his majesty, his heirs or successors to the said Edward Bertie, Samuel Horsey, Henry Smith and Alexius Clayton, of the sum of seventeen thousand five hundred pounds, clear of all deductions, on or before the twenty-ninth day of September, one thousand seven hundred and twenty-nine, should by deed indented and to be enrolled in his majesty's high court of chancery, surrender, convey, and assure unto his majesty his heirs and successors, all and singular the said seven eighth parts or shares (the whole into eight equal parts to be divided) and all other the parts and shares, interests and estates, of and in the said provinces or territories, and all and singular the premises thereby vested in them and their heirs aforesaid, which said sum of seventeen thousand five hundred pounds should be applied and disposed of in such manner as by the said act is particularly directed. And it was by said act further enacted, That from and after the payment of the said sum of five thousand pounds to the said Edward Bertie, Samuel Horsey, Henry Smith and Alexius Clayton, the survivor or survivors of them, or the executors or administrators of such survivor, and after the execution of the grant and assignment of the said parts and shares of the said arrears, by the said act directed to be made, his majesty might have, receive and enjoy the said seven eighth parts or shares (the whole into eight equal parts to be divided) and all and every other parts and shares of the said arrears of quit rents, and other rents and sums of money thereby vested in the said Edward Bertie, Samuel Horsey, Henry Smith and Alexius Clayton, and should and might have, use and pursue such and the like remedies for the recovery thereof as the said

Henry duke of Beaufort, William lord Craven, James Bertie, Henry Bertie, Mary Dauson, Doddington Greville, sir John Colleton, Archibald Hutcheson, John Cotton and Joseph Blake, any or either of them, might have had, used or pursued, if the said act had not been made ; and in and by the said act there is contained a reservation to the said John lord Carteret, his heirs, executors, administrators or assigns, of all such estate, right, title, interest, property, claim and demand whatsoever, in, unto or out of one eighth part or share of the said provinces or territories, with all and singular the rights, members and appurtenances thereof, and of, in and to one eighth part or share of all arrears of quit rents, and other rents, sum and sums of money, debts, duties, accounts, reckonings, claims, and demands whatsoever, now due and owing to the present lords proprietors of the said provinces and territories, and all such other rights, titles, privileges and powers whatsoever as the said John lord Carteret, his heirs, executors or administrators then had or might have had, or been entitled unto in case the said act and the conveyances thereby directed to be made to his majesty, his heirs or successors, or either of them, had not been or should not be made as in and by the said act of parliament herein before recited, relation being thereunto had may amongst other things more fully appear.

Reservation
in the act of
one eighth
part of the
provinces,
quit rents,
&c. to John
lord Carteret.

And whereas by indenture tripartite bearing date the twenty-fifth day of July, in the year of our lord one thousand seven hundred and twenty nine, and made or mentioned to be made between our said sovereign lord the king, of the first part, and the said Edward Bertie, Samuel Horsey, Henry Smith, and Alexius Clayton, by the names and additions of Edward Bertie, of Gray's Inn, in the county of Middlesex, Esquire, Samuel Horsey, of Mortlake, in the county of Surry, Esquire, Henry Smith, of Caversham, in the county of Oxon, Esquire, Alexius Clayton, of the Middle Temple, London, Esquire, of the second part, and the most noble Henry duke of Beaufort, the honorable James Bertie, of the parish of Saint John the Evangelist, in the Liberty of Westminster, in the county of Middlesex, Esquire, the honorable Doddington Greville, of Bulford, in the county of Wilts, Esquire, the said Doddington Greville and James Bertie being the surviving devisees named in the last will of the most no-

Indenture
tripartite
of the 5th July, 1729, between the king, the trustees, and the late proprietors.

ble Henry duke of Beaufort, deceased, in trust for the said Henry, now duke of Beaufort, and for the right honorable Charles Noel Somerset Esquire commonly called Lord Charles Noel Somerset his brother, an infant, the right honorable William lord Craven, Joseph Blake, of the province of South Carolina, in America, Esquire, Archibald Hutcheson, of the Middle Temple, London, Esquire, John Cotton, of the Middle Temple, London, Esquire, Sir John Colleton, of Exmouth, in the county of Dover, Baronet, the honorable Henry Bertie, of Dorton, in the county of Bucks, Esquire, Mary Dawson, of the parish of Saint Andrew, Holborn, in the county of Middlesex, widow, and Elizabeth Moor, of London, widow, of the third part, reciting as therein is recited.

The trustees convey and the proprietors confirm to the king the said seven parts except as by the act excepted.

It is witnessed that they the said Edward Bertie, Samuel Horsey, Henry Smith and Alexius Clayton, for the consideration therein, pursuant to the directions in the said recited act of parliament, and the trust thereby in them reposed, did bargain, sell and surrender, and the said Henry duke of Beaufort, William lord Craven, James Bertie, Doddington Greville, Henry Bertie, Mary Dawson, Elizabeth Moor, Sir John Colleton party thereto, Archibald Hutcheson, John Cotton, and Joseph Blake, did ratify and confirm unto his Majesty, his heirs and successors, the said seven undivided eighth parts (the whole into eight equal parts to be divided) and all other the part or share, parts or shares, interests and estates in and by the recited act of parliament vested in them the said Edward Bertie, Samuel Horsey, Henry Smith and Alexius Clayton, (except as in the said act is excepted) of and in the aforesaid provinces or territories called Carolina, and of and in all and singular the royalties, franchises, lands, tenements, hereditaments and premises, in and by the said several recited letters patent or either of them granted or mentioned to be granted, with their and every of their rights, members and appurtenances, and all the estate, right, title, interest, trust, property, claim and demand whatsoever, of them the said Edward Bertie, Samuel Horsey, Henry Smith and Alexius Clayton, and of the said Henry duke of Beaufort, James Bertie, Doddington Greville, William lord Craven, Henry Bertie, Mary Dawson, Elizabeth Moor, sir John Colleton party thereto, Archibald Hutcheson, John Cotton and Joseph

Blake, every or any of them, of, in, and to the same. To hold the said seven undivided eighth parts (the whole into eight equal parts to be divided) and all other the premises thereby bargained, sold and surrendered, with their and every of their appurtenances (except as therein before excepted) unto the king's most excellent majesty, his heirs and successors.

And it is by the said indenture further witnessed, That for the further consideration therein mentioned, they the said Edward Bertie, Samuel Horsey, Henry Smith and Alexius Clayton, in pursuance of the trust in them reposed, in and by the said recited act of Parliament, did grant, bargain, sell, assign, transfer and set over ; and the said Henry duke of Beaufort, William lord Craven, James Bertie, Doddington Greville, Henry Bertie, Mary Dauson, Elizabeth Moor, sir John Colleton party thereto, Archibald Hutcheson, John Cotton and Joseph Blake, did ratify and confirm unto his said majesty, his heirs and successors, the said seven eighth parts (the whole into eight equal parts to be divided) of all and every the arrears of the quit rents, sum and sums of money, debts, duties and demands whatsoever, which at the time of making the said act of parliament were due and owing to the said Henry duke of Beaufort, or to the said James Bertie, and Doddington Greville, and to the said John lord Carteret, William lord Craven, James Bertie, Henry Bertie, Mary Dauson, Elizabeth Moor, sir John Colleton party thereto, Archibald Hutcheson, John Cotton and Joseph Blake, and all the arrears, shares, sums of money and premises, in and by the said recited act vested or intended to be vested in them the said Edward Bertie, Samuel Horsey, Henry Smith and Alexius Clayton, in trust for the purposes aforesaid ; and all the right, title, interest, trust claim and demand whatsoever of them the said Edward Bertie, Samuel Horsey, Henry Smith and Alexius Clayton, and of them the said Henry duke of Beaufort, James Bertie, Doddington Greville, William lord Craven, Henry Bertie, Mary Dauson, Elizabeth Moor, sir John Colleton party thereto, Archibald Hutcheson, John Cotton and Joseph Blake, every or any of them, of, in, and to the same. To hold, receive and enjoy the said arrears, sums of money and premises therein last before granted, bargained and sold and assigned unto his said

Seven parts of the quit rents conveyed in like manner to the king.

Lord Carteret petitions the king in council to have his 8th part set out and allotted to him, and proposes to surrender the government of the provinces.

majesty, his heirs and successors, to and for his and their own use and benefit as in and by the said recited indenture, relation thereunto being had may more fully appear.

And whereas the said John lord Carteret, by his humble petition, to his majesty in council, reciting the said several letters patent and act of parliament herein before recited, and that he is still entitled to one full undivided eighth part of the said province, and of all the premises granted by the said several letters patent, and also of the arrear of quit rents, and other duties, reckonings, claims and demands, hath humbly prayed his majesty that his said eighth part of the soil of the said provinces and territories, might be set out and allotted to him in such part of the said provinces and territories as should be agreed on between such persons as his majesty shall be pleased to appoint for his majesty, and such persons as the said John lord Carteret should name on his part. To have, hold and enjoy the same forever hereafter in severalty to the said John lord Carteret, his heirs and assigns, together with all and every the same royalties, powers, liberties, franchises and privileges, (the government thereof and of the said province of Carolina only excepted) as far as concerns such eighth part to be so allotted to the said John lord Carteret, as he is entitled to under the said letters patent and act of parliament, in case such division or allotment was not or should not be made, and under the like quit rents proportionably, as is mentioned in the said letters patent according to the proportion or eighth part thereof; and thereupon the said John lord Carteret humbly offered and proposed to surrender to his majesty, his heirs and successors, his share and interest of and in the government of the said provinces or territories, and to convey, release and confirm to his majesty, his heirs and successors, the other seven parts of the said provinces.

Petition referred to a committee of the privy council.

And whereas his present majesty was pleased to refer the said petition to the right honorable the lords of the committee of his majesty's most honourable privy council, for them to consider thereof, and report the same, with their opinion thereupon, to his majesty in council, and which said petition the said lords of the committee of his majesty's most honourable privy council, did refer to the right honourable the lords commissioners for trade and

By them referred to the

plantations for them to examine the same and consider thereof and report the same with their opinion thereupon to their lordships. And whereas the lords commissioners for trade and plantations having examined the said petition, and considered thereof, did, by their report to the said lords of the committee of his majesty's most honourable privy council, offer as their opinion, that it would be for his majesty's service that the said lord Carteret's property should be separated from that of his majesty, wherein the said lord Carteret should enjoy whatsoever he was entitled to by the charters of Carolina, and the aforesaid act of parliament; and for the better preventing any difficulties that might attend the setting out an eighth part of the soil of the said province, the said lords commissioners conceive the method proposed by the said lord Carteret would be the most effectual, which said report the said lords of the committee of his majesty's most honourable privy council having taken into their consideration, did agree in opinion with the said lords commissioners for trade and plantations. And whereas the said right honourable the lords of the committee of his majesty's most honourable privy council did on the twenty-fourth of August, one thousand seven hundred and forty two, make their report thereupon to his majesty, reciting as herein last before is recited; and that the said lord Carteret's property should be separated from that of his majesty, and for that end the said committee humbly propose that the respective governors of South and North Carolina, or either of them, as his majesty should be pleased to direct, be ordered to nominate and appoint proper persons as commissioners on his majesty's behalf, not exceeding five, who in conjunction with a like number of persons to be appointed by the said lord Carteret as commissioners on his behalf, should be empowered to set out and allot to the said lord Carteret one full eighth part of the said provinces of Carolina, in such part or parts of the said provinces and territories as should be agreed on by the said commissioners so to be appointed as aforesaid; and that they should be required to make a return of their proceedings therein to his majesty in council, within eighteen months after the date of his majesty's order to be made upon the said report, and also to lay before his majesty a plan containing a full and exact description of the said

lords commissioners for trade and plantations.

Lords commissioners report to the committee of privy council in favor of the petition.

The committee agree in opinion with the commissioners.

The committee report to the king that lord Carteret's property should be separated from his majesty's.

That the governors of the Carolinas, or either of them, be ordered to appoint commissioners to allot the said 8th part to lord Carteret.

The com'rs to make a return of such allotment to the king in council within 18 months.

And to lay

before the
king a plan
of the lands,
&c.

lands, together with the respective boundaries thereof, in order to his majesty's signifying his royal pleasure (in case his majesty should approve thereof) for conveying the same to the said lord Carteret in such manner as should be advised by his majesty's counsel learned in the law, provided the said lord Carteret should at the same time make a surrender to his majesty of all his pretensions to the government of the said provinces of Carolina, and should convey, release, and confirm to his majesty, his heirs and successors the other seven parts of the said provinces : and for the better guidance of the commissioners so to be appointed on his majesty's behalf in the discharge of their duty therein, the said committee conceived, that it might be advisable for his majesty by his order in council, to require the said commissioners to follow and observe such directions and instructions as might be found necessary to be given from time to time, either by his majesty, or by those who act under his majesty's royal authority; and which said report his majesty in council was pleased to approve of.

The king ap-
proves of
the report.

Order in
council for
carrying the
provisions of
the report
into effect.

And whereas his said majesty, by his order in council, bearing date the fifteenth day of September, in the year of our Lord one thousand seven hundred and forty two, reciting as herein last above is recited, and that his majesty in council was that day pleased to take the said petition into his royal consideration, together with the opinion of a committee of his privy council, and of the lords commissioners for trade and plantations thereupon, and was thereby pleased to order that the respective governors of the provinces of S. and N. Carolina, or either of them, as his majesty should thereafter be pleased to direct, should nominate and appoint proper persons to be commissioners on his majesty's behalf, not exceeding five, who in conjunction with a like number of persons to be appointed by the said lord Carteret as commissioners on his behalf, were thereby empowered to set out and allot to the said lord Carteret one full eighth part of the said provinces of Carolina, in such part or parts of the said provinces and territories as should be agreed upon by the commissioners so to be appointed as aforesaid ; and that the said commissioners should make a return of their proceedings herein to his majesty in council, within eighteen months from the date of the said order, and that they should at

the same time transmit to his majesty a plan containing a full and exact description of the said lands, together with the respective boundaries thereof, in order to his majesty's signifying his royal pleasure, (in case his majesty should approve thereof) for conveying the same to the said lord Carteret in such manner as shall be advised by his majesty's counsel learned in the law, provided that the said lord Carteret should at the same time make a surrender to his majesty of all his pretensions to the government of the said provinces of Carolina, and should convey, release and confirm to his majesty his heirs and successors, the other seven parts of the said provinces as by the said petition and order, relation thereunto likewise being had, may more fully appear.

And whereas commissioners were accordingly appointed on behalf of his majesty, and of the said John lord Carteret, to set out and allot to the said John lord Carteret one full eighth part of the said provinces of Carolina, who by their humble report to his majesty in council bearing date the sixth day of December, in the year of our lord one thousand seven hundred and forty-three, did certify that in pursuance of his majesty's said order in council, dated the fifteenth of September, one thousand seven hundred and forty-two, and of his majesty's royal instructions thereupon, given the twenty-fifth day of April, one thousand seven hundred and forty-three, they did immediately proceed to set out and allot to the said John lord Carteret one full eighth part of the provinces of Carolina, in one entire separate district, in the province of North Carolina, next adjoining and contiguous to the province of Virginia, which eighth part is bounded to the north by the line that divides Carolina from Virginia, to the east, by the great western ocean, commonly so called, and as far southwardly as a cedar stake set upon the sea side in the latitude of thirty-five degrees and thirty-four minutes at north latitude, being six miles and a half to the southward of Chickmacomack inlet, from that stake by a west line which passed twenty-five feet to the southward of the house wherein Thomas Wallis liveth, and so west as far as the bounds of the charter granted to the lords proprietors of Carolina by his majesty king Charles the second, which west line went one thousand six hundred and sixty poles to the north of the south end of Bath-Town;

Commissioners appointed to set off and allot the said one eighth part, and their report thereon.

Boundaries of lord Carteret's 1-8th part.

The return
of the com-
missioners
referred to
the commit-
tee of the
privy coun-
cil.

Report of
the commit-
tee.

Report of
the commit-
tee, &c. ap-
proved by
the king in
council.

and the said commissioners did, pursuant to the said order in council, transmit to his majesty a plan containing a full and exact description of the said one eighth part of the said provinces or territories, so set out and allotted to the said John lord Carteret, annexed to their said report, and all which boundaries are marked out and ascertained by the said plan, a true and exact copy whereof is stampd on the fifth skin of these presents ; which said return of the said commissioners his majesty was pleased by his order in council, bearing date the twenty-first of March last, to refer to the said lords of the committee of his most honourable privy council, for them to consider thereof, and report their opinion thereupon to his majesty in council ; and whereas the said right honourable the lords of the committee of his majesty's most honourable privy council for plantation affairs, did upon consideration thereof, by their report to his majesty in council, bearing date the ninth day of May last, reciting such orders, reports, and proceedings upon the said petition of the lord Carteret as are herein before recited, agree humbly to report as their opinion, that his majesty might be pleased to approve of the said return and plan of the allotment thereby made to the said lord Carteret, for his one eighth part of both the provinces of Carolina, and that thereupon it might be advisable for his majesty to order his attorney and solicitor-general to prepare the necessary instruments or deeds, conformable to what is contained in the aforementioned reports of the fifteenth of September, one thousand seven hundred and forty-two, for conveying, releasing, and confirming the said lands to the said lord Carteret and his heirs, and likewise for the said lord Carteret's surrendering up to his majesty all his pretensions to the government of the said provinces of Carolina, and for conveying, releasing, and confirming to his majesty, his heirs and successors the other seven parts of the said provinces. And whereas on the said ninth of May last, his majesty in council, took the said report last above mentioned into consideration, and was pleased with the advice of his privy council to approve thereof, and also, of the return and plan thereto annexed, and of the allotment of land thereby made to the said lord Carteret for his one eighth part of the provinces of Carolina, and his majesty did thereby order that Mr. Attorney and Mr. Solicitor

General do prepare such instruments or deeds as are proposed by the said report, as by the said orders and reports, relation being thereunto respectively had may more fully appear.

The att^y & sol^r gen^l ordered to prepare the deeds.

Now this indenture witnesseth, that for and in consideration of the said John lord Carteret surrendering, releasing and confirming unto his said majesty, all his estate, right, title and interest of, in and to the government of the said provinces of Carolina, and of, in and to the said seven eighth parts divided from the said one eighth part so allotted to the said John lord Carteret as aforesaid, of and in the aforesaid provinces or territories called Carolina, and also for and in consideration of the said John lord Carteret's granting and assigning unto his said present majesty all and every the arrears of quit rents and other sum or sums of money, debts, duties, accounts, reckonings, claims and demands whatsoever, which are now due and owing to his present majesty and to the said lord Carteret from the farmers, tenants or inhabitants of the said seven eighth parts of the said provinces or territories, for the respective lands and tenements which are situate within, and part of the seven eighth parts of the said provinces or territories as aforesaid, his said present majesty, of his especial grace, certain knowledge and mere motion, hath been graciously pleased to give and grant, ratify, release and confirm, and by these presents for himself, his heirs and successors, doth give and grant, release, ratify and confirm unto the said John lord Carteret, his heirs and assigns forever, all that the said one eighth part of the said provinces and territories as the same is separated, set out and allotted to the said John lord Carteret, by the said commissioners as aforesaid; and the reversion and reversions, remainder and remainders, yearly and other rents, issues and profits of, in and to, and out of the said one eighth part of the said provinces and territories and every part and parcel thereof, and also all the estate, right, title, interest, trust, property, right of action, right of entry, claim and demand whatsoever of his said present majesty of, in and to the same, every or any part or parcel thereof, together with all and singular the like, and as ample rights, privileges, royalties, liberties, immunities and franchises, of what kind soever, within the said one eighth part of the said pro-

The king's grant to lord Carteret for 1-8th part of the provinces so allotted to him.

Exceptions
to the gene-
ral grant.

vinces or territories so divided, set out, and allotted to the said John lord Carteret as aforesaid, in as ample manner and form as the said John lord Carteret, together with the said Henry duke of Beaufort, William lord Craven, James Bertie, Doddington Greville, Henry Bertie, Mary Dauson, Elizabeth Moor, sir John Colleton, Archibald Hutcheson, John Cotton and Joseph Blake, any or either of them could have held, used or enjoyed the same by virtue of the said recited letters patent, or either of them, in case the said act of parliament and conveyances herein before recited had not been made, except nevertheless, out of this grant, the said powers of making laws, calling or holding of assemblies, erecting courts of justice, appointing judges or justices, pardoning criminals, creating or granting titles of honour, making ports or havens, taking customs or duties on goods laden or unladen, making and erecting counties, forts, castles and cities, or furnishing them with habiliments of war, incorporating cities, boroughs, towns, villages or any other place or places, raising, employing or directing the militia, making war or executing martial law, exercising any of the royal rights of a country palatine, and of doing, using or exercising any other the prerogatives, pre-eminences, rights, jurisdictions and authorities of, belonging or relating to, the administration of the government of the said one eighth part of the said provinces. To have and to hold the said one eighth part of the said provinces and territories so divided, set out, and allotted to the said John lord Carteret as aforesaid; and all other the royalties, franchises, powers, privileges, lands, tenements, hereditaments and premises hereby given, granted, released and confirmed, or intended so to be, with their, and every of their appurtenances (except as before excepted) unto the said John lord Carteret, his heirs and assigns, to the use and behoof of the said John lord Carteret, his heirs and assigns forever; yielding and paying to his said majesty, his heirs and successors the annual rent of one pound thirteen shillings and four pence, payable at the feast of All Saints forever: And also one fourth part of all gold and silver ore, that shall be found within the said one eighth part of the said premises so separated as aforesaid.

Yielding a
rent of
1*l.* 13*s.* 4*d.*
and 1-4th
part of all
gold and sil-
ver ore.

And this indenture further witnesseth, that as well for the consideration aforesaid as for divers other good consi-

derations there unto especially moving, his said present majesty hath given, granted and assigned, and by these presents doth, for himself, his heirs and successors, give, grant and assign unto the said John lord Carteret, his executors, administrators and assigns, all the arrears of quit rent, sum and sums of money, debts, duties, accounts, reckonings, claims and demands whatsoever, now due and owing to his said present majesty, and the said John lord Carteret, or either of them, for or from the said one eighth part of the said provinces and territories so divided, set out, and allotted to the said John lord Carteret as aforesaid; and all the right, title, interest, trust, property, benefit, advantage, claim and demand whatsoever, of his said present majesty, of, in, and to the same. To have, hold, receive and enjoy the same arrears, sums of money, and premises herein last before given, granted and assigned unto the said John lord Carteret, his executors, administrators and assigns, to and for his and their own use and benefit.

All arrears of quit-rents due for the eighth part so allotted, also conveyed to lord Carteret.

Witnessed by the king, at Westminster, the day and year first above mentioned.

BY WRIT OF PRIVY SEAL.



A DECLARATION OF RIGHTS.

At a CONGRESS of the Representatives of the Freemen of the State of NORTH-CAROLINA, assembled at Halifax, the seventeenth day of December, in the year of our lord one thousand seven hundred and seventy-six, for the purpose of establishing a CONSTITUTION or *Form of Government* for the said State.

A DECLARATION OF RIGHTS made by the Representatives of the Freemen of the State of *North-Carolina*.

Sect. 1. THAT all political power is vested in and derived from the people only. Derivation of power.

Sect. 2. That the people of this state ought to have the sole and exclusive right of regulating the internal government and police thereof. Right of government.

Sect. 3. That no man or set of men are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services. Privileges and emoluments.

Sect. 4. That the legislative, executive and supreme judicial powers of government ought to be forever separate and distinct from each other. Powers of gov't to be distinct.

Sect. 5. That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights and ought not to be exercised. Power of suspending or executing laws.

Sect. 6. That elections of Members to serve as representatives in General Assembly, ought to be free. Elections to be free.

Sect. 7. That in all criminal prosecutions every man has a right to be informed of the accusation against him, and to confront the accusers and witnesses with other testimony, and shall not be compelled to give evidence against himself. Criminal prosecutions.

- Modes of prosecution. *Sect. 8.* That no freeman shall be put to answer any criminal charge, but by indictment, presentment, impeachment.
- Trial by jury. *Sect. 9.* That no freeman shall be convicted of any crime, but by the unanimous verdict of a jury of good and lawful men, in open court, as heretofore used.
- Bail, fines, and cruel punishments. *Sect. 10.* That excessive bail should not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.
- General warrants. *Sect. 11.* That general warrants whereby any officer or messenger may be commanded to search suspected places, without evidence of the fact committed, or to seize any person or persons not named, whose offence is not particularly described and supported by evidence, are dangerous to liberty, and ought not to be granted.
- Law of the land. *Sect. 12.* That no freeman ought to be taken, imprisoned or disseized of his freehold, liberties or privileges, or outlawed or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the law of the land.
- Habeas Corpus. *Sect. 13.* That every freeman restrained of his liberty is entitled to a remedy to enquire into the lawfulness thereof, and to remove the same if unlawful, and that such remedy ought not to be denied or delayed.
- Trial by jury. *Sect. 14.* That in all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and ought to remain sacred and inviolable.
- The press. *Sect. 15.* That the freedom of the press is one of the great bulwarks of liberty, and therefore ought never to be restrained.
- Taxes, imposts, and duties. *Sect. 16.* That the people of this state ought not to be taxed or made subject to the payment of any impost or duty, without the consent of themselves or their representatives in General Assembly freely given.
- Arms, standing armies, military and civil powers. *Sect. 17.* That the people have a right to bear arms for the defence of the state; and as standing armies in time of peace are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to, and governed by, the civil power.
- Right of the people to assemble. *Sect. 18.* That the people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the legislature for redress of grievances.

Sect. 19. That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own conscience. Rights of conscience.

Sect. 20. That for redress of grievances and for amending and strengthening the laws, elections ought to be often held. Elections frequent.

Sect. 21. That a frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty. Fundamental principles.

Sect. 22. That no hereditary emoluments, privileges or honours, ought to be granted or conferred in this state. Hereditary emoluments, privileges and honors.

Sect. 23. That perpetuities and monopolies are contrary to the genius of a free state, and ought not to be allowed. Perpetuities and monopolies.

Sect. 24. That retrospective laws, punishing facts committed before the existence of such laws, and by them only declared criminal, are oppressive, unjust, and incompatible with liberty, wherefore no *ex post facto* law ought to be made. Ex post facto laws.

Sect. 25. The property of the soil in a free government, being one of the essential rights of the collective body of the people, it is necessary in order to avoid future disputes, that the limits of the state should be ascertained with precision; and as the former temporary line between *North and South-Carolina* was confirmed and extended by commissioners appointed by the legislatures of the two states, agreeable to the order of the late king *George* the second, in council, that line, and that only, should be esteemed the southern boundary of this state, as follows: *that is to say*, beginning on the sea side, at a cedar stake at or near the mouth of *Little River*, being the southern extremity of *Brunswick* county, and runs from thence a north-west course through the boundary house, which stands in thirty-three degrees fifty-six minutes, to thirty-five degrees north latitude; and from thence a west course so far as is mentioned in the charter of king *Charles* the second, to the late proprietors of *Carolina*: Therefore all the territories, seas, waters and harbours, with their appurtenances, lying between the line above described and the southern line of the state of *Virginia*, which begins on the sea shore in thirty-six degrees thirty minutes north latitude, and from thence runs west, agreeable to the said

Limits of the state.

A DECLARATION OF RIGHTS.

Provisos.

charter of king *Charles*, are the right and property of the people of this state, to be held by them in sovereignty, any partial line without the consent of the legislature of this state, at any time thereafter directed or laid out, in any wise notwithstanding. *Provided always*, That this declaration of right shall not pre-judge any nation or nations of *Indians*, from enjoying such hunting grounds as may have been, or hereafter shall be secured to them by any former or future legislature of this state. *And provided also*, That it shall not be construed so as to prevent the establishment of one or more governments westward of this state, by consent of the legislature. *And provided further*, That nothing herein contained, shall affect the titles or possessions of individuals, holding or claiming under the laws heretofore in force, or grants heretofore made by the late king *George* the third, or his predecessors, or the late lords proprietors, or any of them.

December the 17th day, A. D. 1776, read the third time, and ratified in open congress.

R. CASWELL, *President.*

Copy, Test.

J. GLASGOW, *Secretary.*

THE STATE CONSTITUTION.

The CONSTITUTION or *Form of Government* agreed to and resolved upon by the representatives of the Freemen of the State of NORTH-CAROLINA, elected and chosen for that particular purpose, in Congress assembled, at Halifax, the eighteenth day of December, in the year of our lord one thousand seven hundred and seventy-six.

WHEREAS allegiance and protection are in their nature reciprocal, and the one should of right be refused when the other is withdrawn. And whereas *George* the third, king of *Great-Britain*, and late sovereign of the *British American* colonies, hath not only withdrawn from them his protection, but by an act of the *British* legislature declared the inhabitants of these states out of the protection of the *British* crown, and all their property found upon the high seas liable to be seized and confiscated to the uses mentioned in the said act. And the said *George* the third has also sent fleets and armies to prosecute a cruel war against them, for the purpose of reducing the inhabitants of the said colonies to a state of abject slavery. In consequence whereof, all government under the said king within the said colonies, hath ceased, and a total dissolution of government in many of them hath taken place. And whereas the continental congress having considered the premises, and other previous violations of the rights of the good people of *America*, have therefore declared that the thirteen united colonies are, of right, wholly absolved from all allegiance to the *British* crown, or any other foreign jurisdiction whatsoever, and that the said colonies now are and forever shall be, free and independent states: Wherefore, in our present state, in order to prevent anarchy and confusion, it becomes necessary that a government should be established in this state:

Preamble.

Therefore, We, the representatives of the freemen of *North-Carolina*, chosen and assembled in Congress for the express purpose of framing a constitution, under the authority of the people, most conducive to their happiness and prosperity, do declare that a government for this state, shall be established in manner and form following, *to wit*:

General assembly. *Sect. 1.* That the legislative authority shall be vested in two distinct branches, both dependant on the people, *to wit*, a senate and house of commons.

Senate. *Sect. 2.* That the senate shall be composed of representatives annually chosen by ballot, one from each county in this state.

Commons. *Sect. 3.* That the house of commons shall be composed of Representatives annually chosen by ballot, two for each county, and one for each of the towns of *Edenton, Newbern, Wilmington, Salisbury, Hillsborough, and Halifax.*

Name. *Sect. 4.* That the Senate and House of Commons, assembled for the purpose of legislation, shall be denominated the General Assembly.

Qualification of senators. *Sect. 5.* That each member of the senate shall have usually resided in the county in which he is chosen, for one year immediately preceding his election; and for the same time shall have possessed, and continue to possess, in the county which he represents, not less than three hundred acres of land in fee.

Of members of the commons. *Sect. 6.* That each member of the house of commons shall have usually resided in the county in which he is chosen, for one year immediately preceding his election, and for six months shall have possessed, and continue to possess, in the county which he represents, not less than one hundred acres of land in fee, or for the term of his own life.

Qualifications of electors for the senate. *Sect. 7.* That all freemen of the age of twenty-one years, who have been inhabitants of any one county within the state twelve months immediately preceding the day of any election, and possessed of a freehold within the same county of fifty acres of land for six months next before and at the day of election, shall be entitled to vote for a member of the senate.

For the commons. *Sect. 8.* That all freemen of the age of twenty-one years, who have been inhabitants of any county within

this state twelve months immediately preceding the day of any election, and shall have paid public taxes, shall be entitled to vote for members of the house of commons for the county in which he resides.

Sect. 9. That all persons possessed of a freehold in any town in this state having a right of representation, and also all freemen who have been inhabitants of any such town twelve months next before and at the day of election, and shall have paid public taxes, shall be entitled to vote for a member to represent such town in the house of commons. *Provided always,* That this section shall not entitle any inhabitant of such town to vote for members of the house of commons for the county in which he may reside; nor any freeholder in such county, who resides without or beyond the limits of such town, to vote for a member for said town.

Electors for towns.

Sect. 10. That the senate and house of commons when met, shall each have power to choose a speaker and other their officers, be judges of the qualifications and elections of their members, sit upon their own adjournments from day to day, and prepare bills to be passed into laws: the two houses shall direct writs of election for supplying intermediate vacancies, and shall also jointly by ballot adjourn themselves to any future day and place.

Power of the houses to choose their officers, to judge of the qualification of members, to adjourn, to prepare bills and issue writs of election.

Sect. 11. That all bills shall be read three times in each house before they pass into laws, and be signed by the speaker of both houses.

Reading of bills.

Sect. 12. That every person who shall be chosen a member of the senate or house of commons, or appointed to any office or place of trust, before taking his seat, or entering upon the execution of his office, shall take an oath to the state; and all officers shall also take an oath of office.

Oaths.

Sect. 13. That the General Assembly shall, by joint ballot of both houses, appoint judges of the Supreme Courts of Law and Equity, Judges of Admiralty, and an Attorney-General, who shall be commissioned by the Governor, and hold their offices during good behaviour.

Appointm't of judges, &c. and tenure of office.

Sect. 14. That the senate and house of commons shall have power to appoint the generals and field-officers of the militia, and all officers of the regular army of this state.

Military appointments.

Sect. 15. That the senate and house of commons, joint-

App't, &c.

Appointm't
and qualifi-
cation of go-
vernor.

ly at their first meeting after each annual election, shall by ballot elect a governor for one year ; who shall not be eligible to that office longer than three years in six successive years: that no person under thirty years of age, and who has not been a resident in this state above five years, and having in the state a freehold in lands and tenements above the value of one thousand pounds, shall be eligible as governor.

Appointm't,
power and
duty of coun-
cil.

Sect. 16. That the senate and house of commons, jointly at their first meeting after each annual election, shall by ballot elect seven persons to be a council of state for one year ; who shall advise the governor in the execution of his office ; and that four members shall be a quorum ; their advice and proceedings shall be entered in a journal to be kept for that purpose only, and signed by the members present ; to any part of which any member present may enter his dissent ; and such journal shall be laid before the General Assembly when called for by them.

Great seal.

Sect. 17. That there shall be a seal of this state, which shall be kept by the Governor, and used by him as occasion may require ; and shall be called the Great Seal of the State of *North-Carolina*, and be affixed to all grants and commissions.

The govern-
or to com-
mand and
call out the
militia.

Sect. 18. That the Governor for the time being, shall be captain-general and commander in chief of the militia ; and in the recess of the General Assembly, shall have power, by and with the advice of the council of State, to embody the militia for the public safety.

Power and
duty of the
governor.

Sect. 19. That the governor for the time being, shall have power to draw for and apply such sums of money as shall be voted by the general assembly for the contingencies of government, and be accountable to them for the same : he also may, by and with the advice of the council of state, lay embargoes, or prohibit the exportation of any commodity, for any term not exceeding thirty days at any one time, in the recess of the general assembly ; and shall have the power of granting pardons and reprieves, except where the prosecution shall be carried on by the general assembly, or the law shall otherwise direct ; in which case he may, in the recess, grant a reprieve until the next sitting of the general assembly : and may exercise all the other executive powers of government, limited and restrained as by this constitution is

mentioned, and according to the laws of the state : and on his death, inability, or absence from the state, the speaker of the senate for the time being, and in case of his death, inability, or absence from the state, the speaker of the house of commons, shall exercise the powers of the governor, after such death, or during such absence or inability of the governor or speaker of the senate, or until a new nomination is made by the general assembly.

Sect. 20. That in every case where any officer, the right of whose appointment is vested in the general assembly, shall, during their recess die, or his office by other means become vacant, the governor shall have power, with the advice of the council of state, to fill up such vacancy by granting a temporary commission, which shall expire at the end of the next session of the general assembly.

Temporary commissions by the governor.

Sect. 21. That the governor, judges of the supreme courts of law and equity, judges of admiralty and attorney general, shall have adequate salaries during their continuance in office.

Salaries of Judges, &c.

Sect. 22. That the General Assembly shall, by joint ballot of both houses, annually appoint a treasurer or treasurers for this state.

Treasurer.

Sect. 23. That the governor and other officers offending against the state, by violating any part of this constitution, mal-administration or corruption, may be prosecuted on the impeachment of the General Assembly, or presentment of the grand-jury of any court of supreme jurisdiction in this state.

Mode of prosecuting governor and other officers.

Sect. 24. That the general assembly shall, by joint ballot of both houses, triennially appoint a secretary.

Secretary of state.

Sect. 25. That no persons who heretofore have been, or hereafter may be, receivers of public monies, shall have a seat in either house of general assembly, or be eligible to any office in this state, until such person shall have fully accounted for and paid into the treasury, all sums for which they may be accountable and liable.

Receivers of public monies disqualified to hold a seat.

Sect. 26. That no treasurer shall have a seat in either the senate, house of commons or council of state, during his continuance in that office, or before he shall have finally settled his accounts with the public, for all monies which may be in his hands, at the expiration of his office, belonging to the state, and hath paid the same into the hands of the succeeding treasurer.

Treasurer disqualified.

Military officers disqualified.

Sect. 27. That no officer in the regular army or navy, in the service and pay of the United States, of this or any other state, nor any contractor or agent for supplying such army or navy with clothing or provisions, shall have a seat in either the senate, house of commons, or council of state, or be eligible thereto; and any member of the senate, house of commons, or council of state, being appointed to and accepting of such office, shall thereby vacate his seat.

Counsellors disqualified.

Sect. 28. That no member of the council of state shall have a seat either in the senate or house of commons.

Judges disqualified.

Sect. 29. That no judge of the supreme court of law or equity, or judge of admiralty, shall have a seat in the senate, house of commons, or council of state.

Sec'y, attor'-gen. & clk's of courts disqualified.

Sect. 30. That no secretary of this state, attorney-general, or clerk of any court of record, shall have a seat in the senate, house of commons, or council of state.

Ministers of the gospel disqualified.

Sect. 31. That no clergyman, or preacher of the gospel, of any denomination, shall be capable of being a member of either the senate, house of commons, or council of state, while he continues in the exercise of the pastoral function.

Religious qualification for office.

Sect. 32. That no person who shall deny the being of God, or the truth of the protestant religion, or the divine authority either of the old or new testament, or who shall hold religious principles incompatible with the freedom and safety of the state, shall be capable of holding any office or place of trust or profit in the civil department, within this state.

Appointment and commissioning of justices of the peace.

Sect. 33. That the justices of the peace, within the respective counties within this state, shall in future be recommended to the governor for the time being, by the representatives in general assembly, and the governor shall commission them accordingly: and the justices, when so commissioned, shall hold their offices during good behaviour, and shall not be removed from office by the general assembly unless for misbehaviour, absence, or inability.

No exclusive religious establishment.

Sect. 34. That there shall be no establishment of any one religious church in this state in preference to any other; neither shall any person, on any pretence whatsoever, be compelled to attend any place of worship, contrary to his own faith or judgment; nor be obliged to pay for the purchase of any glebe, or the building of any

house of worship, or for the maintenance of any minister or ministry, contrary to what he believes right, or has voluntarily and personally engaged to perform; but all persons shall be at liberty to exercise their own mode of worship. *Provided*, That nothing herein contained, shall be construed to exempt preachers of treasonable or seditious discourses from legal trial and punishment.

Sect. 35. That no person in the state shall hold more than one lucrative office at any one time. *Provided*, That no appointment in the militia, or to the office of a justice of the peace, shall be considered as a lucrative office.

Only one lucrative office to be held by the same person at once.

Sect. 36. That all commissions and grants shall run in the name of the State of North-Carolina, and bear test and be signed by the governor; and all writs run in the same manner, and bear test and be signed by the clerks of the respective courts; indictments shall conclude, against the peace and dignity of the state.

Form of commissions, grants, writs and indictments.

Sect. 37. That the delegates for this state to the continental congress, while necessary, shall be chosen annually by the general assembly, by ballot, but may be superseded in the mean time, in the same manner; and no person shall be elected to serve in that capacity more than three years successively.

Election of members of congress.

Sect. 38. That there shall be a sheriff, coroner or coroners, and constables in each county in this state.

Sheriffs, coroners and constables.

Sect. 39. That the person of a debtor, where there is not a strong presumption of fraud, shall not be confined in prison after delivering up, *bona fide*, all his estate, real and personal, for the use of his creditors, in such manner as shall be hereafter regulated by law. All prisoners shall be bailable by sufficient sureties, unless for capital offences, when the proof is evident, or the presumption great.

Honest debtors protected from imprisonment.

Prisoners bailable.

Sect. 40. That every foreigner who comes to settle in this state, having first taken an oath of allegiance to the same, may purchase, or by other just means acquire, hold, and transfer land or other real estate; and after one year's residence, shall be deemed a free citizen.

Aliens may purchase lands.

Sect. 41. That a school or schools shall be established by the legislature for the convenient instruction of youth, with such salaries to the masters paid by the public, as may enable them to instruct at low prices; and all useful learning shall be duly encouraged and promoted in one or more Universities.

Schools and Universities to be established.

Purchases of
land from the
Indians.

Sect. 42. That no purchase of lands shall be made of the *Indian* natives, but on behalf of the public, and by authority of the general assembly.

Perpetuities.

Sect. 43. That the future legislature of this state shall regulate entails in such a manner as to prevent perpetuities.

The declara-
tion of rights
is part of the
constitution.

Sect. 44. That the declaration of rights is hereby declared to be part of the constitution of this state, and ought never to be violated on any pretence whatever.

Members of
assembly
may protest.

Sect. 45. That any member of either house of the general assembly, shall have liberty to dissent from, and protest against any act or resolve which he may think injurious to the public or any individual, and have the reasons of his dissent entered on the journals.

What consti-
tutes a quo-
rum of either
house.

Sect. 46. That neither house of the general assembly shall proceed upon public business, unless a majority of all the members of such house are actually present ; and that upon a motion made and seconded, the yeas and nays upon any question shall be taken and entered on the journals ; and that the journals of the proceedings of both houses of the general assembly, shall be printed and made public immediately after their adjournment.

Yeas and
nays how ta-
ken.

Printing the
journals.

This constitution is not intended to preclude the present congress from making a temporary provision for the well ordering of this state, until the general assembly shall establish government agreeable to the mode herein before prescribed.

Temporary
provision.

R. CASWELL, *President.*

December the 18th day, A. D. 1776, read the third time, and ratified in open Congress.

JAS. GREEN, JUN. *Secretary.*

Copy, Test.

J. GLASGOW, *Secretary.*

ORDINANCE, &c.

An Ordinance to enable the freemen of the town of Fayetteville to elect a member to represent the said town, on the same terms with the other towns in this state.

WHEREAS it hath been recommended by the general assembly to this convention, to consider the propriety of allowing the town of *Fayetteville* a member to represent the said town, on the same terms with the other towns in this state; and this convention, in consideration of the same, deeming it consistent with the justice and policy of the state, that the said town of *Fayetteville* should be represented as other district towns of this state: *Be it therefore ordained and declared, by the representatives of the State of North-Carolina in convention assembled, and it is hereby ordained by the authority of the same, That the said town shall and may be represented.*

II. *And be it further ordained by the authority aforesaid, That this ordinance shall be held and taken, to all intents and purposes, as part of the constitution of this state.*

*Done in Convention, the 22d of Nov. Anno
Dom. 1789.*

SAMUEL JOHNSTON, *President.*

By Order, J. HUNT, Secretary.

NAMES OF DELEGATES, &c.

The following are the names of the delegates who attended the Congress, which met at Halifax, the 12th of Nov. 1776, and which formed and adopted the Bill of Rights and constitution of the state. The seats of those whose names are marked * were vacated by appointments to office. Those whose names are marked † obtained leave of absence from Congress, at various times, previous to the adoption of the constitution. Those only whose names are not marked were present when the Bill of Rights and Constitution finally passed.

ANSON COUNTY	Thomas Wade, David Love, Wm. Picket,†	CUMBERLAND	Robert Rowan, Philip Alston,† Wm. Rand, Robert Cobb,
BEAUFORT	John Barrow,† Thos. Respass, Thos. Respass, jun. Francis Jones, Robert Tripp.	CURRITUCK	Samuel Jarvis,* Jas. White, Kedar Merchant, Hollowell Wil- liams, } Thos. Williams.
BERTIE	Wm. Gray, Noah Hinton, Zedekiah Stone.	DORRIS	Richard Caswell, Simon Bright, Abraham Sheppard, Benjamin Exum, Andrew Bass.
BLADEN	Thos. Robeson, Thos. Owen, Thos. Amis, Jas. Council.	DUPLIN	Jas. Kenan, Thomas Gray,† Wm. Dickson, Wm. Taylor, James Gillispie.
BRUNSWICK	Cornelius Hornett, Arch'd McLean, Lewis Dupre,† Wm. Lord.	EDGCOMBE	Wm. Haywood, Elisha Battle, Jonas Johnston, Isaac Sessums, Wm. Horn.
BUTE	Jas. Denton, Thos. Eaton, Philemon Hawkins, Benjamin Seawell, Benjamin Ward.	GRANVILLE	Thos. Person, Robert Lewis, Memucan Hunt, John Oliver.
CARTERET	Sol'n Sheppard, Brice Williams, Jno. Eaton, Thos. Chadwick.	GUILEORD	David Caldwell, Joseph Hines, Charles Bruce, Ralph Gorrell, Isham Browder.
CHOWAN	Jas. Blount, Thos. Benbury, Thos. Jones, Luke Sumner, Jacob Hunter.	HALIFAX	John Bradford, James Hogan,* Egbert Haywood, Willis Alston, Samuel Weldon, Benjamin M'Cul- loch. }
CHATHAM	Ambrose Ramsey, Jno. Birdsong, Mial Scurlock, Josiah Hogan.		
CHAVEN	Wm. Bryan, Jno. Bryan, Christopher Neall, Jno. Tilghman.		

HARTFORD - -	Lawrence Baker,† Wm. Murfree, Robert Sumner, Day Ridley, James Wright.	PERQUIMONS -	Benjamin Harvey, Miles Harvey, Thomas Harvey, Wm. Skinner.
HIDE - - - -	Joseph Hancock, John Jordan, Benjamin Parmerle, Ambrose Jones.	PITT - - - -	Benjamin May, Wm. Robson, James Gorham, George Evans,* Edward Salter.
JOHNSTON - -	Need'm Bryan, jun. John Stevens, Henry Rains, Alexander Averyt.	ROWAN - - - -	Matthew Lock, Griffith Ruther- ford, } Wm. Sharpe, James Smith, John Brevard.
MARTIN - - -	Wm. Williams, Thos. Hunter, Jno. Hardison, Samuel Smithwick.	SURRY - - - -	Robert Lanier, Wm. Hall, Charles Gordon, Joseph Williams.
MECKLENBURG,	Robert Irwin, Zacheus Wilson, Hezekiah Alexan- der,† Waightstil Avery	TRYON - - - -	Joseph Harden, Robert Abernathy, Wm. Graham, Wm. Alston, John Barber.†
NEW-HANOVER,	John Ashe, Samuel Ashe, John Devane, Sampson Moseley, John Hollingsworth.	TYRRILL - - -	Peter Wynn,† Jere. Frazier, Isham Webb, Benj. Blount.
NORTHAMPTON,	Allen Jones, James Ingram,* Thos. Parker, Howell Edmunds.	WAKE - - - -	Tingnal Jones, James Jones,* Michael Rogers, John Rice, Britain Fuller.†
ONSLOW - - -	John Spicer, Thos. Johnston, Benajah Doty, Edward Starkey, Henry Rhodes.	WASHINGTON	Chas. Robeson, John Carter, John Haile, John Sevier.
GRANGE - - -	Thos. Burke, Nathaniel Roches- ter, } Alexander Mebane, John Butler, John McCabe.	DISTRICT, Watauga settlement, }	
PASQUOTANK -	Henry Abbot, Devotion Davis, Isaac Gregory, Demsey Burgess, Lemuel Sawyer.†	<i>Towns of</i> BATH - - - - Wm. Brown, BRUNSWICK - Parker Quince, CAMPBELTON - Thomas Hadley, EDENTON - - Joseph Hewes, HALIFAX - - - Willie Jones, NEWBERN - - Abner Nash, SALISBURY - - David Nesbit.	



THE CONSTITUTION OF THE UNITED STATES.

IN GENERAL ASSEMBLY, Nov. 20, 1788.

RESOLVED, That it is the opinion of this house, a new convention be recommended, for the purpose of reconsidering the new constitution, held out by the federal convention as a government for the United States.

Resolved, That it be recommended to such of the inhabitants of this state as are entitled to vote for members of the house of commons, at the annual election to be held in each county on the third *Friday* and *Saturday* in *August* next, to vote for five persons in each county, and one person in each borough-town having a right of representation agreeable to the constitution of this state, to sit as a state convention, for the purpose of deliberating and determining on the proposed federal constitution for the future government of the United States, and on such amendments, if any, as shall or may be made to the said constitution by a convention of the states previous to the meeting of the said convention of this state; which election shall be conducted agreeable to the mode, and conformable to the rules and regulations prescribed by law for conducting the elections of members of the general assembly: and every citizen within this state, being a freeholder, shall be eligible to a seat in the said convention, sheriffs and returning officers excepted.

Resolved, That the sheriffs of the counties in this state, do advertise and notify the people of their counties and borough-towns, of the time, place and purpose of holding said election, at the same time, and in the same manner,

as the law requires them to advertise elections for members of the general assembly.

Resolved, That the persons so elected to serve in a state convention, do assemble and meet together on the third *Monday* in *November*, at such place as shall be appointed for the meeting of the general assembly, then and there to deliberate and determine on the said constitution, and on the amendments, if any; and if approved of by them, to confirm and ratify the same on behalf of this state, and make report thereof to congress and to the general assembly.

Resolved, That it be recommended by this assembly, to the convention which is to meet on the third *Monday* in *November* to reconsider the new constitution, that they also consider the propriety of allowing the town of *Fayetteville* a member to represent the said town, on the same terms with the other district towns in this state.

ALEX. MARTIN, S. S.
JOHN SITGREAVES, S. C.

In Convention, Saturday, November 21, 1789.

WHEREAS the general convention which met in *Philadelphia*, in pursuance of a recommendation of congress, did recommend to the citizens of the United States, a constitution or form of government, in the following words, *viz.*

WE the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of *America*.

ARTICLE I.

SECTION 1.

Legislative
powers vested
in congress.

All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

SECTION 2.

House of repre-
sentatives, &c.

The house of representatives shall be composed of members chosen every second year by the people of the

several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding *Indians* not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of *New-Hampshire* shall be entitled to choose three, *Massachusetts* eight, *Rhode-Island and Providence Plantations* one, *Connecticut* five, *New-York* six, *New-Jersey* four, *Pennsylvania* eight, *Delaware* one, *Maryland* six, *Virginia* ten, *North-Carolina* five, *South-Carolina* five, and *Georgia* three.

4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

SECTION 3.

1. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen

H. of Rep.—its members; by whom chosen; qual. of elect'rs.

A rep. to be 25; 7 years a citizen of the U. S.; and an inhabitant of his state when elected.

Rep's and taxes to be apportioned according to numbers.

Actual enumeration every ten years.

Limitat'n of the ratio of represent'n, &c.

First apportionment of representatives.

Writs of elect'n for filling vacancies.

H. of Rep. to choose sp'kr &c & have power of impeachm't.

Senators, how chosen: each to have a vote. [See art. 5.]

Senate divided into three classes; to be chosen every two years.

Executives of states to fill vacancies in the recess of legislatures, &c.

A senator aged 30; nine years a citizen of the U. S. and an inhabitant of his state when chosen.

V. Pres't to be president of the senate; to vote on an eq. div. only.

The senate to choose their president pro tempore, &c.

The senate have the sole power to try impeachments, &c.

Extent of judgment in cases of impeachment; but the party further liable by indictment at law.

Times, &c. of holding elections for senators and rep's regulated by the states or by congress. Congress to assemble annually the 1st Mond. in Dec. unless, &c.

Each house judge of the election and qualifications of its own members. Quorum.

every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

4. The Vice-President of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

5. The senate shall choose their other officers, and also a president *pro tempore*, in the absence of the vice-president, or when he shall exercise the office of President of the United States.

6. The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the chief justice shall preside: and no person shall be convicted without the concurrence of two thirds of the members present.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honour, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

SECTION 4.

The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

2. The congress shall assemble at least once in every year, and such meeting shall be on the first *Monday* in *December*, unless they shall by law appoint a different day.

SECTION 5.

1. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorised to compel the attendance of absent

members, in such manner, and under such penalties as each house may provide.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two thirds expel a member.

Each house to form its own rules and punish its members.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one fifth of those present, be entered on the journal.

Journals of each house. Yeas & nays how taken.

4. Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Adjourn'm't of both houses.

SECTION 6.

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

Senators and representatives to be paid, &c. privileged from arrest; not to be questioned for debate, &c.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

Concerning the holding of offices by senators and repre's.

SECTION 7.

1. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Revenue bill to originate in the house of Rep. &c.

2. Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the U. States; If he approve he shall sign it, but if not he shall return it, with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other

Powers of the presid'nt & of congress in the enacting of laws and the forms of proceeding on bills in that respect.

house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (*Sundays* excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

Joint resolutions, except for adjournment to receive the same sanction as bills.

3. Every order, resolution, or vote to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8.

Congress shall have power, 1st. to lay taxes, &c.

1. The congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

2. Bor. money.

2. To borrow money on the credit of the United States;

3. Regulate commerce.

3. To regulate commerce with foreign nations, and among the several states, and with the *Indian* tribes;

4. Establish the rule of naturalization & bankrupt laws.

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

5. Coin money, &c. and fix wts. and measures.

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

6. Provides for punishing counterfeiters.

6. To provide for the punishment of counterfeiting the securities and current coin of the United States;

7. Estab. P. Offices, &c.

7. To establish post offices and post roads;

8. Patent rights.

8. To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

9. To constitute inferior tribunals, &c.

9. To constitute tribunals inferior to the supreme court; to define and punish piracies and felonies committed on the high seas, and offences against the law of nations.

10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water ;
10. To declare war, &c.
11. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years ;
10. Raise armies, &c.
12. To provide and maintain a navy ;
12. Provide a navy.
13. To make rules for the government and regulation of the land and naval forces ;
13. Make rules for army and navy.
14. To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions ;
14. Provide for calling forth the militia.
15. To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress ;
15. Provide for organizing the militia, &c.
16. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings ;—and,
16. Exercise exclusive jurisdiction over a district, and places for forts, &c.
17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.
17. Make all laws necessary to the execution of their powers.

SECTION 9.

1. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.
- Importation of certain persons not to be prohibited until after 1808. [See article 5.]
2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.
- Habeas Corpus.
3. No bill of attainder or *ex post facto* law shall be passed.
- No bill of attainder or *ex post facto* law.

Direct taxes according to census.

4. No capitation, or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No export duty, nor preference of one state to another in commerce.

5. No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another : nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

Public monies, how drawn, &c.

6. No money shall be drawn from the treasury, but in consequence of appropriations made by law ; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No titles of nobility. No presents, &c.

7. No title of nobility shall be granted by the United States : and no person holding any office of profit or trust under them, shall, without the consent of congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

SECTION 10.

Restrictions on the power of the states individually.

1. No state shall enter into any treaty, alliance, or confederation ; grant letters of marque and reprisal ; coin money ; emit bills of credit ; make any thing but gold and silver coin a tender in payment of debts ; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

Powers which the states can exercise only under the sanction of congress.

2. No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws : and the nett produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States ; and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION 1.

Executive power vested in a president, &c.

1. The executive power shall be vested in a president of the United States of America. He shall hold his office

during the term of four years, and, together with the vice-president, chosen for the same term, be elected as follows

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

Electors of president and vice president.

3. *The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the Senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice-president.

Meeting of the electors of president &c.

[*This clause is annulled by the amend't art. 12.]

4. The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

Congress may fix the time of choosing the electors, &c.

5. No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this constitution, shall be eligible to the office of president;

Qualifications of president.

neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of vacancy in the office of president, the vice president to act, &c.

6. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the congress may by law provide for the case of removal, death, resignation or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

Compensation to the president.

7. The president shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

The president to take an oath.
Form of the oath.

8. Before he enters on the execution of his office, he shall take the following oath or affirmation :

9. *"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."*

SECTION 2.

The president is commander in chief--he may require opinions of executive officers, and may grant pardons, &c.

1. The president shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He may, by advice of the senate, make treaties, appoint ambassadors and other officers; but congress may vest certain appointments otherwise.

2. He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: But the congress may by law vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.

3. The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

President may fill vacancies in recess.

SECTION 3.

He shall from time to time give to the congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

President to recommend measures to congress &c. may convene and adjourn congress on certain occasions, shall receive amb'rs, see the laws executed and commission officers.

SECTION 4.

The president, vice-president and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

President and other officers removable by impeachment.

ARTICLE 3.

SECTION 1.

The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour; and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Judicial power vested in a supreme court &c. judges to hold their offices during good behaviour.

SECTION 2.

1. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more states;—between a state and citizens of another state;—between citizens of different states;—between citizens of the same state claiming lands under

Extent of the judicial power.

[*Amended,
see art. 11.]

Original and
appellate juris-
diction of the
supreme court.

Trial of crimes
to be by jury.
The venue.

Definition of
treason, &c.

Congress to de-
clare the pun-
ishment of trea-
son, &c.

Credit to be
given in one
state to the pub-
lic acts, &c. of
another.

Reciprocity of
citizenship thro'
out the states.

Criminals flying
from one state
to another,
to be delivered
up.

grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.*

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crime shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

SECTION 3.

1. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

ARTICLE 4.

SECTION 1.

Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

SECTION 2.

1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

2. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

3. No person held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up on claim of the party to whom such service or labour may be due.

Runaway slaves &c. to be delivered up.

SECTION 3.

1. New states may be admitted by the congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the congress.

New states may be admitted into the union, &c.

2. The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Congress to have power of territory, &c.

SECTION 4.

The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestick violence.

Republican form of government guaranteed to each state, &c.

ARTICLE 5.

The congress whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; *Provided*, That no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first* and fourth* clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.†

Mode of amending the constitution.

[*Concerning the importation of certain persons, and direct taxes.]

[†See art. 1, sec. 3, clause 1.]

ARTICLE 6.

Assumption of debts incurred under the confederation.

This constitⁿ, acts of congress and treaties, the supreme law—the state judges bound thereby.

Members of congress and of the state legislatures, &c. bound by oath to support this constitution.

1. All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

2. This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

3. The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or publick trust under the United States.

ARTICLE 7.

Ratification of 9 states, sufficient, &c.

The ratification of the conventions of nine states, shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention by the unanimous consent of the states present, the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty-seven and of the independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names

GEORGE WASHINGTON,
president, and deputy from Virginia.

NEW HAMPSHIRE.

John Langdon,
Nicholas Gilman.

MASSACHUSETTS.

Nathaniel Gorham,
Rufus King.

CONNECTICUT.

William Samuel Johnson,
Roger Sherman.

NEW-YORK.

Alexander Hamilton.

NEW JERSEY.

William Livingston,
David Brearly,
William Patterson,
Jonathan Dayton.

PENNSYLVANIA.

Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,
Thomas Fitzsimons,
Jarad Ingersoll,
James Wilson,
Gouverneur Morris.

DELAWARE.

George Read,
Gunning Bedford, jun.
John Dickinson,
Richard Bassett,
Jacob Broome.

MARYLAND.

James M'Henry,
Daniel of St. Thomas Jenifer,
Daniel Carroll.

VIRGINIA.

John Blair,
James Madison, jun.

NORTH CAROLINA.

William Blount,
Richard Dobbs Spaight,
Hugh Williamson.

SOUTH CAROLINA.

J. Rutledge,
Charles Cotesworth Pinck-
ney,
Charles Pinckney,
Pierce Butler.

GEORGIA.

William Few,
Abr. Baldwin.

Attest.

WILLIAM JACKSON, *secretary.*

Resolved, That this convention, in behalf of the free- [See 1789, c.
men, citizens and inhabitants of the state of NORTH-CAROLINA, do adopt and ratify the said constitution and form 304, 1794, c.
of government. 408.]

SAMUEL JOHNSTON, *President.*

By Order,

J. HUNT, *Secretary.*

IN CONVENTION,

MONDAY, SEPTEMBER 17th, 1787.

Present: the states of New Hampshire, Massachusetts, Connecticut, Mr. Hamilton from New-York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

1. *Resolved*. That the preceding constitution be laid before the United States in Congress assembled, and that it is the opinion of this convention, that it should afterwards be submitted to a convention of delegates chosen in each state by the people thereof, under the recommendation of its legislature, for their assent and ratification; and that each convention assenting to, and ratifying the same, should give notice thereof to the United States in congress assembled.

Constitution to be laid before congress, &c.

2. *Resolved*, That it is the opinion of this convention, that as soon as the conventions of nine states shall have ratified this constitution, the United States in congress assembled, should fix a day on which electors should be appointed by the states which shall have ratified the same, and a day on which the electors should assemble to vote for the president, and the time and place for commencing proceedings under this constitution. That after such

Congress to fix a day for appointing electors of president, &c.

Mode recommended for carrying the constitution into effect.

publication, the electors should be appointed, and the senators and representatives elected. That the electors should meet on the day fixed for the election of the president, and should transmit their votes, certified, signed, sealed, and directed, as the constitution requires, to the secretary of the United States, in congress assembled ; that the senators and representatives should convene at the time and place assigned ; that the senators should appoint a president of the senate, for the sole purpose of receiving, opening, and counting the votes for president ; and, that after he shall be chosen, the congress, together with the president, should, without delay, proceed to execute this constitution.

By the unanimous order of the convention,

GEORGE WASHINGTON, *president*;

WILLIAM JACKSON, *secretary*.

IN CONVENTION,

SEPTEMBER, 17th, 1787.

SIR,

Letter from the convention that framed the constitution, to the president of congress.

1. We have now the honor to submit to the consideration of the United States in congress assembled, that constitution which has appeared to us the most advisable.

2. The friends of our country have long seen and desired, that the power of making war, peace, and treaties ; that of levying money, and regulating commerce, and the correspondent executive and judicial authorities, should be fully and effectually vested in the general government of the union : but the impropriety of delegating such extensive trust to one body of men, is evident ; hence results the necessity of a different organization.

3. It is obviously impracticable in the federal government of these states, to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all. Individuals entering into society, must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstance, as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered, and those which may be reserved ; and on the present occasion, this difficulty was increased by a difference among

the several states as to their situation, extent, habits, and particular interests.

4. In all our deliberations on this subject, we kept steadily in our view, that which appears to us the greatest interest of every true American, the consolidation of our union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each state in the convention to be less rigid on points of inferior magnitude, than might have been otherwise expected; and thus the constitution, which we now present, is the result of a spirit of amity, and of that mutual deference and concession, which the peculiarity of our political situation rendered indispensable.

5. That it will meet the full and entire approbation of every state, is not perhaps to be expected; but each will doubtless consider, that had her interest been alone consulted, the consequences might have been particularly disagreeable or injurious to others; that it is liable to as few exceptions as could reasonably have been expected, we hope and believe; that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish. With great respect, we have the honor to be, sir, your excellency's most obedient and humble servants.

By unanimous order of the convention.

GEORGE WASHINGTON, *president.*

His excellency the president of congress.

[The conventions of a number of the states having, at the time of their adopting the constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added, congress, at the session begun and held at the city of New York, on Wednesday, the 4th of March, 1789, proposed to the legislatures of the several states twelve amendments, ten of which only were adopted. They are the ten first following.] Amendments to the constitution.

AMENDMENTS TO THE CONSTITUTION.

ARTICLE 1.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; Congress prohibited fr'm interfering with religion, with free-

dom of speech,
of the press, and
the right of pe-
tition.

or of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE 2.

Right of the
people to keep
and bear arms,
&c.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE 3.

No soldier to be
quartered in a-
ny house, dur-
ing peace, with-
out consent, &c.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

ARTICLE 4.

No search war-
rant to issue, ex-
cept on proba-
ble cause, oath,
&c.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE 5.

No person to be
held to answer
for a crime, un-
less on present-
ment, &c. ex-
cept in the land
or naval forces,
nor to answer
for the same of-
fence twice, &c.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service; in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE 6.

Assurance of
speedy and pub-
lic trial by jury,
&c. in criminal
prosecutions.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

ARTICLE 7.

Right of trial by
jury in suits at

In suits at common law, where the value in contro-
versy shall exceed twenty dollars, the right of trial by

jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

common law, above the value of \$20, &c.

ARTICLE 8.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Excessive bail, and unjust and cruel punishments, prohibited.

ARTICLE 9.

The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Rights enumerated not to disparage those retained.

ARTICLE 10.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Powers not delegated, &c. are reserved to the states or people.

ARTICLE 11.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

Restriction of judicial powers. [See ante, art. 3, sec. 2, clause 1.]

ARTICLE 12.*

1. The electors shall meet in their respective states, and vote by ballot for president and vice president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted: the person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those

[*See ante, art. 2, sec. 1, clause 3, page 65.]

Mode of electing the president and vice president of the United States.

voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote ; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice president shall act as president, as in the case of the death or other constitutional disability of the president.

2. The person having the greatest number of votes as vice president, shall be the vice president, if such number be a majority of the whole number of electors appointed ; and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice president : a quorum for the purpose shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of president, shall be eligible to that of vice president of the United States.

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TREATY OF PEACE BETWEEN AMERICA AND GREAT-BRITAIN:

BY THE UNITED STATES IN CONGRESS ASSEMBLED.

A PROCLAMATION.

WHEREAS definitive articles of peace and friendship, between the United States of *America* and his *Britannic* majesty, were concluded and signed at *Paris*, on the third day of *September*, 1783, by the plenipotentiaries of the said United States, and of his said *Britannic* Majesty, duly and respectively authorised for that purpose; which definitive articles are in the words following:
In the name of the Most Holy and Undivided Trinity:

It having pleased the divine providence to dispose the hearts of the most serene and most potent prince *George* the third, by the grace of *God*, king of *Great-Britain*, *France* and *Ireland*, defender of the faith, duke of *Brunswick* and *Lunenburgh*, arch-treasurer and prince elector of the holy *Roman* empire, &c. and of the United States of *America*, to forget all past misunderstandings and differences that have unhappily interrupted the good correspondence and friendship which they mutually wish to restore, and to establish such a beneficial and satisfactory intercourse between the two countries, upon the ground of reciprocal advantages and mutual convenience, as may promote and secure to both perpetual peace and harmony; and having for this desirable end already laid the foundation of peace and reconciliation, by the provisional articles signed at *Paris* on the 30th of *November*, 1782, by the commissioners empowered on each part, which articles were agreed to be inserted in, and to constitute the treaty of peace proposed to be concluded be-

See act Nov.
1787, c. 264.

The object of the treaty is to establish a beneficial intercourse, peace and harmony between the two countries,

tween the crown of *Great-Britain* and the said *United States*, but which treaty was not to be concluded until terms of peace should be agreed upon between *Great-Britain* and *France*, and his *Britannic Majesty* should be ready to conclude such treaty accordingly ; and the treaty between *Great-Britain* and *France*, having since been concluded, his *Britannic Majesty* and the *United States of America*, in order to carry into full effect the provisional articles above mentioned, according to the tenor thereof, have constituted and appointed, *that is to say*, his *Britannic Majesty* on his part, *David Hartley*, esq. member of the parliament of *Great-Britain*, and the said *United States* on their part, *John Adams*, esq. late a commissioner of the *United States of America* at the court of *Versailles*, late delegate in Congress from the state of *Massachusetts*, and chief justice of the said state, and minister plenipotentiary of the said *United States* to their high mightinesses the states-general of the *United Netherlands* ; *Benjamin Franklin*, esq. late delegate in congress from the state of *Pennsylvania*, president of the convention of the said state, and minister plenipotentiary from the said *United States of America* at the court of *Versailles* ; and *John Jay*, esq. late president of congress, and chief justice of the state of *New-York*, and minister plenipotentiary from the said *United States* at the court of *Madrid*, to be plenipotentiaries for the concluding and signing the present definitive treaty ; who, after having reciprocally communicated their respective full powers, have agreed upon and confirmed the following articles :

Great Britain
acknowledges
the independence of the U.
States, &c.

Art. 1. His *Britannic* majesty acknowledges the said *United States*, *viz.* *New-Hampshire*, *Massachusetts-Bay*, *Rhode-Island* and *Providence Plantations*, *Connecticut*, *New-York*, *New-Jersey*, *Pennsylvania*, *Delaware*, *Maryland*, *Virginia*, *North-Carolina*, *South-Carolina*, and *Georgia*, to be free, sovereign and independent states ; that he treats with them as such, and for himself, his heirs and successors, relinquishes all claims to the government, property, and territorial rights of the same, and every part thereof.

The boundaries
of the U. States
defined and es-
tablished.

Art. 2. And that all disputes which might arise in future, on the subject of the boundaries of the said *United States*, may be prevented, it is hereby agreed and declared, that the following are and shall be their boundaries, *viz.* from the north-west angle of *Nova-Scotia*, *viz.* that

angle which is formed by a line drawn due north from the source of *St. Croix* river to the *Highlands*, along the said *Highlands*, which divide those rivers that empty themselves into the river *St. Lawrence*, from those which fall into the *Atlantic* ocean, to the north-westernmost head of *Connecticut* river; thence down along the middle of that river to the forty-fifth degree of north latitude; from thence by a line due west on said latitude, until it strikes the river *Irriquois* or *Cataraqui*; thence along the middle of the said river into *Lake Ontario*; through the middle of the said lake until it strikes the communication by water between that lake and *Lake Erie*, through the middle of said lake, until it arrives at the water communication between that lake and *Lake Huron*, thence through the middle of said lake to the water communication between that lake and *Lake Superior*; thence through *Lake Superior*, northward of the *Isles Royal* and *Phelipeaux* to the *Long Lake*; thence through the middle of said *Long Lake* and the water communication between it and the *Lake of the Woods*, to the said *Lake of the Woods*: thence through the said lake to the most north-western point thereof, and from thence on a due west course to the river *Mississippi*; thence by a line to be drawn along the middle of the said river *Mississippi* until it shall intersect the northernmost part of the 31st degree of north latitude, south, by a line to be drawn due east from the determination of the line last mentioned in the latitude of 31 degrees north of the equator, to the middle of the river *Apalachicola* or *Catahouche*; thence along the middle thereof to its junction with the *Flint* river; thence strait to the head of *St. Mary's* river; and thence down along the middle of *St. Mary's* river to the *Atlantic* ocean; east by a line to be drawn along the middle of the river *St. Croix* from its mouth in the bay of *Fundy* to its source, and from its source directly north to the aforesaid *Highlands* which divide the rivers that fall into the *Atlantic* ocean from those which fall into the river *St. Lawrence*, comprehending all islands within twenty leagues of any of the shores of the United States, and lying between the lines to be drawn due east from the points where the aforesaid boundaries between *Nova-Scotia* on the one part, and *East-Florida* on the other, shall respectively touch the bay of *Fundy* and the *Atlantic* ocean, excepting such islands as now are or heretofore have been within the limits of the said province of *Nova-Scotia*.

The citizens of the U. States to continue to enjoy the right of fishing on the banks of Newfoundland, in the gulf of St. Lawrence, &c.

Liberty to cure fish in the unsettled bays, &c. of Nova Scotia, &c.

Creditors to meet with no lawful impediments to the recovery of bona fide debts.

Congress to recommend to the states to provide for the restitution of confiscated estates, &c.

12 months allowed certain persons to endeavor to recover their estates, &c.

Congress to recommend to the states a reconsideration of their laws concerning confiscations, &c.

Art. 3. It is agreed that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the *Grand-Bank*, and on all the other banks of *Newfoundland*, also in the gulph of *St. Lawrence*, and all other places in the sea, where the inhabitants of both countries used at any time heretofore to fish. And also that the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of *Newfoundland* as *British* fishermen shall use, (but not to dry or cure the same on that island) and also on the coasts, bays and creeks of all others of his *Britannic* majesty's dominions in *America*; and that the *American* fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbours and creeks of *Nova-Scotia*, *Magdalen islands* and *Labrador*, so long as the same shall remain unsettled; but so soon as the same or either of them shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlement without a previous agreement for that purpose with the inhabitants, proprietors or possessors of the ground.

Art. 4. It is agreed that creditors on either side shall meet with no lawful impediment to the recovery of the full value, in *sterling* money, of all *bona fide* debts heretofore contracted.

Art. 5. It is agreed that congress shall earnestly recommend it to the legislatures of the respective states to provide for the restitution of all estates, rights and properties, which have been confiscated, belonging to real *British* subjects; and also of the estates, rights and properties of persons resident in districts in the possession of his majesty's arms, and who have not borne arms against the said United States; and that persons of any other description shall have free liberty to go to any part or parts of any of the thirteen United States, and therein to remain twelve months unmolested in their endeavours to obtain the restitution of such of their estates, rights and properties, as may have been confiscated; and that congress shall also earnestly recommend to the several states a re-consideration and revision of all acts or laws regarding the premises, so as to render the said laws or acts perfectly consistent, not only with justice and equity, but with that spirit of conciliation, which, on the return of the blessings of peace should universally prevail: and that congress shall also earnestly recommend to the several states, that the estates, rights and proper-

ties of such last mentioned persons shall be restored to them, they refunding to any persons who may be now in possession, the *bona fide* price (where any has been given) which such persons may have paid on purchasing any of the said lands, rights or properties since the confiscation.

And it is agreed that all persons who have any interest in confiscated lands, either by debts, marriage settlements or otherwise, shall meet with no lawful impediment in the prosecution of their just rights.

Art. 6. That there shall be no future confiscations made, nor any prosecutions commenced against any person or persons, for or by reason of the part which he or they may have taken in the present war; and that no person shall, on that account, suffer any future loss or damage, either in his person, liberty or property; and that those who may be in confinement on such charges, at the time of the ratification of the treaty in *America*, shall be immediately set at liberty, and the prosecutions so commenced be discontinued.

Art. 7. There shall be a firm and perpetual peace between his *Britannic* majesty and the said states, and between the subjects of the one and the citizens of the other; wherefore all hostilities both by sea and land shall from henceforth cease; all prisoners on both sides shall be set at liberty, and his *Britannic* majesty shall, with all convenient speed, and without causing any destruction, or carrying away any negroes or other property of the *American* inhabitants, withdraw all his armies, garrisons, and fleets, from the said United States, and from every post, place and harbour within the same, leaving in all fortifications the *American* artillery that may be therein; and shall also order and cause all archives, records, deeds and papers belonging to any of the said states, or their citizens, which in the course of the war may have fallen into the hands of his officers, to be forthwith restored, and delivered to the proper states and persons to whom they belong.

Art. 8. The navigation of the river *Mississippi* from its source to the ocean, shall forever remain free and open to the subjects of *Great-Britain* and the citizens of the United States.

Art. 9. In case it should so happen that any place or territory belonging to *Great-Britain* or to the United States, should have been conquered by the arms of either

Persons having an int'rest in confiscated lands may prosecute their just rights.

Confiscations and prosecutions to cease, &c.

Firm and perpetual peace; prisoners to be released; negroes not to be carried away; armies and fleets to be withdrawn; archives, records, &c. to be restored, &c.

Navigation of the *Mississippi* to be free to both nations.

Conquests made before the arrival of the provisional arti-

cles, to be restored.

from the other, before the arrival of the said provisional articles in *America*, it is agreed that the same shall be restored without difficulty, and without requiring any compensation.

Ratification to be exchanged in six months.

Art. 10. The solemn ratifications of the present treaty, expedited in good and due form, shall be exchanged between the contracting parties in the space of six months, or sooner, if possible, to be computed from the day of the signature of the present treaty. In witness whereof, we the undersigned, their ministers plenipotentiary, have in their name, and in virtue of our full powers, signed with our hands the present definitive treaty, and caused the seals of our arms to be affixed thereto,

Done at Paris, this 3d day of September, in the year of our Lord one thousand seven hundred and eighty-three.

(L. S.) JOHN ADAMS.

(L. S.) DAVID HARTLEY. (L. S.) B. FRANKLIN.

(L. S.) JOHN JAY.

And we the United States in congress assembled, having seen and duly considered the definitive articles aforesaid, did, by a certain act under the seal of the United States, bearing date this 14th day of January, 1784, approve, ratify and confirm the same, and every part and clause thereof, engaging and promising that we would sincerely and faithfully perform and observe the same, and never suffer them to be violated by any one, or transgressed in any manner, as far as should be in our power: and being sincerely disposed to carry the said articles into execution truly, honestly and with good faith, according to the extent and meaning thereof, we have thought proper, by these presents, to notify the premises to all the good citizens of these United States, hereby requiring and enjoining all bodies of magistracy, legislative, executive and judiciary, all persons bearing office, civil or military, of what rank, degree or powers, and all others the good citizens of these states of every vocation and consideration, that reverencing those stipulations entered into on their behalf, under the authority of that federal bond by which their existence as an independent people is bound up together, and is known and acknowledged by the nations of the world, and with that good faith which is every man's surest guide, within their

TREATY OF PEACE.

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several offices, jurisdictions and vocations, they carry into effect the said definitive articles, and every clause and sentence thereof, sincerely, strictly and completely.

GIVEN under the seal of the United States. WITNESS his excellency THOMAS MIFFLIN, our President, at Annapolis, this fourteenth day of January, in the year of our Lord one thousand seven hundred and eighty-four, and of the sovereignty and independence of the United States, the eighth.

(L. C. S.) THOMAS MIFFLIN.

CHARLES THOMSON, *Secretary.*



STATUTES AND PARTS OF STATUTES

OF

GREAT BRITAIN,

REPORTED AS BEING IN FORCE IN THIS STATE, BY THE
COMMISSIONERS APPOINTED UNDER THE ACT OF 1817,
ENTITLED, "AN ACT FOR THE REVISION OF THE ACTS
OF THE GENERAL ASSEMBLY."

Year and Reign.	Title of the Statutes, and Remarks.	Book & page of Ruff head's edit.	
		VOLUME.	PAGE.
20th Hen. 3, 1235, Chapter 7.	'Widows may bequeath the crop of their lands.'	1	16
Chap. 9.	'He is a bastard that is born before the marriage of his parents.'	1	19
21st Hen. 3, 1236.	'The day of the leap-year and the day before shall be holden for one day.'	1	20
3d Edw. 1, 1275. Chapter 9.	'All men shall be ready to pursue fe- lons.' That part only of this statute is in force which corresponds with the title.	1	48
4th Edward 1, Sta- tute 20, 1276.	'Of what things a coroner shall en- quire.' This statute is in force except those parts which relate to the coroner's duty in the following points, viz : making enquiry as to the property of any person —treasure trove—appeals—deodands— wrecks—and except also that part which provides that lands shall remain in the king's hands, &c.	1	66
4th Edw. 1, 1276, Chap. 6.	'By what words in a feoffment a feof- for shall be bound to warranty.'	1	68
6th Edw. 1, 1278, chap. 3.	'An alienation of land by tenant by the curtesy, with warranty, shall be void.'	1	65
6th Edw. 1, chap- ter 5.	'Several tenants against whom an ac- tion of waste is maintainable.'	1	66
Chap. 13.	'No waste shall be made hanging a suit for the land.'	1	69

Year and Reign.	Title of the Statutes, and Remarks.	Book & page of Ruff head's edit.	
		VOLUME.	PAGE.
13th Edw. 1, 1285, Chap. 1.	‘ In gifts in tail the donor’s will shall be observed.’ This statute is not in force, but a recurrence to it is often necessary in examining ancient titles.	1	78
Chap. 15.	‘ An infant eloined may sue by prochein amy.’	1	92
Chap. 14.	‘ The process in an action of waste. A writ to enquire of waste.’	1	92
13th Edw. 1, Chap- ter 18.	‘ He that recovereth debt may sue execution by fieri facias or eligit.’	1	93
Chap. 22.	‘ Waste maintainable by one tenant in common against another.’	1	94
Chap. 23.	‘ Executors may have a writ of account.’	1	95
Chap. 24.	‘ A writ of nuisance of a house, &c. levied and aliened to another. In like cases like writs grantable.’ This statute is in force except those parts which relate to ecclesiastical persons.	1	95
Chap. 31.	‘ An exception to a plea shall be sealed by the justices.’	1	99
Chap. 34.	‘ It is felony to commit a rape. A married woman elopeth with an advouturer.’ That part only of this statute is in force which enacts ‘ that if a wife willingly leave her husband, and go away and continue with the advouturer she shall be barred forever of action to demand her dower,’ &c.	1	101
Chap. 39.	‘ The manner to deliver writs to the sheriffs to be executed. Returning of issues. Resistance of execution of process.’ Those parts only of this statute are in force which give authority to the sheriffs to do certain things in case of resistance of the execution of process, and direct the punishment of those who resist the execution of process.	1	104
Chap. 45.	‘ The process of execution of things recorded within the year or after.’	1	109
Winchester, Chap- ter 1.	‘ Fresh suit shall be made after felons and robbers from town to town.’	1	112
18th Edw. 1, Sta- tute 2.	‘ Statute of quo warranto.’	1	126

Year and Reign.	Title of the Statutes, and Remarks.	Book & page of Ruff head's edit.	
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Statute 3.	'Another new statute of quo warranto.'	1	123
Chap. 3.	'No feoffment shall be made to assure land in main.'	1	122
20th Edward 1, 2	'A statute of waste.'	1	126
Statute 2. 5	'Who be conspirators and who champer-tors.' That part of this statute which relates to 'stewards and bailiffs of great lords' must be excepted.	1	149
33 Edw. 1, 1304.	'He that challengeth a jury or juror for the king must shew his cause.'	1	151
1305.	'An ordinance for measuring of land.'	1	152
Statute 4.	'In what cases it is felony to break prison, in what not.'	1	164
Statute 6.	'The privilege of the church being demanded by the ordinary, shall not be denied to a clerk that hath confessed felony.'	1	171
1st Edw. 2, 1307.	'No man shall come before the justices, or go, or ride armed.'	1	197
9th Edward 2nd. Chap. 16.	'Executors shall have an action of trespass for a wrong done to their testator.'	1	203
2 Edward 3, 1328, Chap. 3.	'Sheriffs and goalers shall receive offenders without any thing taking.'	1	204
4 Edward 3, 1330, Chap. 7.	'Justices of assise shall enquire of maintainers, conspirators and champer-tors.'	1	204
Chap. 10.	'The punishment of a juror, that is ambidexter and taketh money.'	1	210
Chap. 11.	'Process against those that be appealed, indicted or outlawed in one county, and remain in another.'	1	210
5th Edw. 3, Chap- ter 10.	'A record that is defective by misprision of a clerk shall be amended.'	1	224
14th Edw. 3, Chap- ter 6.	'Sheriffs shall have the keeping of goals. A prisoner by duress becomes an approver.'	1	226
Chap. 10.	'None shall maintain any quarrels but their own.'	1	247
20th Edw. 3, 1346. Chap. 4.	'No indictor shall be put upon the inquest of the party indicted.'	1	262
25th Edw. 3, 1350, Chap. 3.	'Executors of executors shall have the benefit and charge of the first testator.'	1	263
Statute 5.			
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Year and Reign.	Title of the Statutes, and Remarks.	Book & page of Ruff head's edit.	
		VOLUME.	PAGE.
Chap. 14.	'What process shall be awarded against him that is indicted of felony.' Only that part of this statute is in force which directs the issuing of a <i>capias</i> .	1	265
Chap. 16.	'The exception of non tenure of parcel shall not abate the whole writ.'	1	288
28th Edward 1354, Chap. 13.	'An inquest shall be de medietate linguæ where an alien is party.' That part of this statute only is in force which gives the inquest.	1	288
34th Edw. 3, 1360, Chap. 1.	'What sort of person shall be justices of the peace; and what authority they shall have.' That part only is in force which is distinguished by being between brackets.	1	299
Chap. 5.	'Auncel weight shall be put out. Buying and selling shall be by equal balance.'	1	300
Chap. 8.	'The penalty of a juror taking a reward to give his verdict.'	1	301
38th Edw. 3, 1363, Chap. 12.	'The punishment of a juror taking reward to give his verdict; and of embracors.'	1	320
50 Edw. 3, 1376, Chap. 6.	'Fraudulent assurances of lands or goods to deceive creditors shall be void.'	1	332
5th Rich. 2, 1381, Chap. 8.	'The penalty where any doth enter into lands where it is not lawful, or with force.'	1	352
9th Rich. 2, 1385, Chap. 3.	'A writ of error or attain maintainable in the reversion.' This statute is in force so far only as it relates to a writ of error.	1	372
12th Rich. 2, 1388, Chap. 13.	'The punishment of them which cause corruption near a city or great town to corrupt the air.'	1	382
15th Rich. 2, 1391, Chap. 2.	'The duty of justices of the peace where any forcible entry is made into lands.'	1	400
2 Henry 4, 1400, Chap. 7.	'In what case the plaintiff shall not be nonsuit if the verdict pass against him.'	1	437
Chap. 11.	'A remedy for him who is pursued wrongfully in the court of admiralty.'	1	438
4th Henry 4, 1402, Chap. 23.	'Judgments given shall continue until they be reversed by attain or error.' In force, except by attain.	1	455

Year and Reign.	Title of the Statutes, and Remarks.	Book & page of Ruffhead's edit.	
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5th Henry 4, 1403, Chap. 10.	'Justices of the peace shall imprison none but in the common gaol.'	1	459
11 Hen. 4th, chap- ter 3.	'Records shall not be amended or repaired after judgment enrolled.' The second in force.	1	459
11 Henry 4, 1409, Chap. 9.	'Jurors in indictments shall be returned by the sheriffs or bailiffs without the denomination of any.'	1	477
13th Hen. 4th 1411, Chap. 7.	'The justices of the peace and the sheriffs shall arrest those which commit any riot, &c. and enquire of them and record their offences.'	1	480
2 Henry 5, 1414, Chap. 2.	'A <i>corpus cum causa</i> , or certiorari to remove him which is in execution at another man's suit.'	1	486
8th Henry 6, 1429, Chap. 9.	'The duty of justices of the peace where land is entered upon or detained with force.' Except the first section.	1	545
9th Henry 5, 1421, Chap. 4.	'The justices may amend defaults in records or process before judgment given.'	1	513
Chap. 12.	'No judgment or record shall be reversed for any writ, process, &c. rased.—What defects in records may be amended by the judges.'	1	550
Chap. 15.	'The justices may in certain cases amend defaults in records.'	1	553
10th Henry 6, 1432, Chap. 4.	'The penalty of him that maketh a false entry, that the plaintiff doth offer himself in person when he doth not.'	1	566
11th Hen. 6, 1433, Chap. 5.	'The remedy where a tenant granteth over his estate, taketh the profits and committeth waste.'	1	571
23 Henry 6, 1444, Chap. 9.	'No sheriff shall let to farm his county or any bailiwick. The sheriff's and bailiff's fees and duties in certain cases.' Only that part is in force which prohibits the letting to farm, &c.	1	608
31st Hen. 6, 1452, Chap. 9.	'A remedy for a woman inforced to be bound by statute or obligation.'	1	628
33 Henry 6, 1455, Chap. 1.	'A remedy for executors against servants that embezzle their master's goods after his death.'	1	629

Year and Reign.	Title of the Statutes, and Remarks.	Book & page of Ruff head's edit.	
		VOLUME.	PAGE.
3 Henry 7, 1486, Chap. 2.	'The penalty for carrying a woman away against her will that hath lands or goods.'	2	69
Chap. 10.	'All deeds of gift made to defraud creditors, shall be void.'	2	70
4th Henry 7, Chap- ter 13.	'Clergy shall be allowed but once, &c.' Part of this statute is in force, viz. that which disallows clergy a second time; and that which relates to the branding with a letter T.	2	77
Chap. 20.	'Actions popular prosecuted by collusion shall be no bar to those which be pursued with good faith.'	2	78
11th Hen. 7, 1494, Chap. 12.	'A mean to help and speed poor persons in their suits.'	2	85
Chap. 20.	'Certain alienations made by the wife, of the lands of her deceased husband, shall be void.'	2	96
19th Hen. 7, 1503, Chap. 13.	'Riot.' All that part of the statute is in force except what relates to summoning a jury and the issues.	2	102
6th Henry 8, 1514, Chap. 6.	'An act for the remitting prisoners with their indictments to the places where the crimes were committed.'	2	122
21st Hen. 8, 1529, Chap. 4.	'The sale of land by part of the executors lawful.'	2	137
Chap. 7.	'Servants embezzelling their master's goods to the value of forty shillings or above, shall be punished as felons.'	2	141
Chap. 11.	'At what time restitution shall be made of goods stolen.'	2	145
Chap. 15.	'Fermors shall enjoy their leases against recoveries by feigned titles.'	2	147
23 Henry 8, 1531, Chap. 1.	'An act concerning convicts in petit treason, murder, &c.' That part of this statute which exempts the clergy from capital punishment is not in force, and except also petit treason.	2	158
25 Henry 8, 1533, Chap. 6.	'The punishment of the vice of buggery.' This act is made perpetual by 32, Hen. 8, C. 3.	2	181

Year and Reign.	Title of the Statutes, and Remarks.	Book & page of Ruff head's edit.	
		VOLUME.	PAGE.
27 Henry 8, 1535, Chap. 10.	'An act concerning uses and wills' except some local provisons.	2	226
32 Henry 8, 1540, Chap. 9.	'The bill of bracerie and buying of titles,' except 1st and 5th sections.	2	280
Chap. 30.	'Misleadings, Jeofails.' Made perpetual, 33 Hen. 8, C. 17.	2	293
Chap. 28.	'Lessees to enjoy the farm against the tenants in tail,' except 4, 5 & 8 sections, and so much as applies to ecclesiastic rights.	2	291
Chap. 33.	'An act that wrongful disseisin is no descent in law.'	2	294
Chap. 34.	'Concerning grantees of reversions to take advantage of the conditions to be performed by the lessees.'	2	294
Chap. 37.	'For the recovery of arrearages of rent by executors of tenants in fee simple,' except the 2nd section and so much of the first as respects distraining for rent.	2	297
33 Henry 8, 1541, Chap. 1.	'A bill against them that counterfeit letters or privy tokens to receive money, or goods in other men's names,' except 5th section.	2	303
37th Hen. 8, 1545, Chap. 8.	'The act that any indictment lacking these words, <i>'vi et armis,'</i> shall be good.' This act is in force except the second section.	2	375
1 Edward 6, 1547, Chap. 12.	'An act for the repeal of certain statutes concerning treasons and felonies.' The 13th section is in force and part of the 10th.	2	392
2 & 3 Edw. 6, 1548, Chap. 24.	'An act for trial of murders and felonies, committed in several counties.'	2	422
5 & 6 Edw. 6, 1552, Chap. 9.	'An act for the taking away the benefit of clergy from certain offenders.'	2	446
Chap. 10.	'An act for the avoiding of clergy from divers persons.'	2	447
5th & 6th Edw. 6, 1553, Chap. 16.	'Against buying and selling of offices.'	2	454
4th & 5th Ph. & Ma. 1557, Chap. 4.	'An act that accessaries in murder and divers felonies shall not have benefit of clergy,' except 2nd section.	2	503

Year and Reign.	Title of the Statutes, and Remarks.	Book & page of Ruff head's edit.
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8th Eliz. 1565, Chap. 4.	' An act to take away the benefit of clergy from certain offenders for felony.'	2 573
18th Eliz. 1576, Chap. 7.	' An act to take away clergy from the offenders in rape or burglary, and an order for the delivery of clerks convict without purgation.' The first section of this act is in force, except the part relative to forfeiture and outlawry.	2 615
Chap. 14.	' An act for reformation of jeofails.'	2 621
27th Eliz. 1585, Chap. 4.	' An act against covinous and fraudulent conveyances.' This act is in force except the 7, 8, 9, 10, 11 and 12 sections.	2 636
Chap. 5.	' An act for furtherance of justice, in cases of demurrer and pleadings.'	2 638
31st Eliz. 1589, Chap. 11.	' An act of explanation or declaration of the statute Octavo Regis' Hen. 6, concerning forcible entries, the indictments thereupon found.'	2 668
39th Eliz. 1597, Chap. 9.	' An act for taking away clergy from offenders against a certain statute made in the year of the reign of king Hen. 7th, concerning the taking away of women against their wills unlawfully.'	2 689
43d Eliz. 1601. Chap. 4.	' An act to redress the misemployment of land, goods and stocks of money, heretofore given to certain charitable uses.'	2 708
21st Jacob. 1, 1623 Chap. 6.	' An act concerning women convicted of small felonies.' That part of the act is in force which allows benefit of clergy to women.	3 95
Chap. 13.	' An act for the further reformation of jeofails.'	3 99
Chap. 24.	' An act for the relief of creditors against such persons as die in execution.'	3 111
Chap. 15.	' An act to enable judges and justices of the peace to give restitution of possession in certain cases.'	3 100
16th & 17th Car. 2, Chap. 8.	' An act to prevent arrest of judgment and superceding executions.'	3 393
4th Anne, 1705, Chap. 16.	' An act for the amendment of the law and the better advancement of justice.'	4 205

Year and Reign.	Title of the Statutes, and Remarks.	Book & page of Ruff head's edit.	
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31st Car. 2, Chap. 2.	' An act for the better security of the liberty of the subject, and for prevention of imprisonment beyond sea.'	3	397
17th Car. 2, 1665, Chap. 8.	' An act for avoiding unnecessary suits and delays.'	3	299
3th Anne, 1710, Chap. 20.	' An act for rendering the proceedings upon writs of mandamus, and informations in the nature of quo warranto, more speedy and effectual; and for the more easy trying or determining the rights of offices and franchises in corporations and boroughs.' The 7th section of this act, extending the statutes of jeofails to mandamus and quo warrantos, is in force.	4	460
5th Geo. 1, 1718, Chap. 13.	' An act for the amendment of writs of error, and for the further preventing the arresting or reversing of judgments after verdicts.	5	201
5th Geo. 2, 1732, Chap. 7.	' An act for the more easy recovery of debts in his majesty's plantations and colonies in America.' The fourth section of this act is in force.	6	74
12th Geo. 3, 1772, Chap. 20.	' An act for the more effectual proceeding against persons standing mute on their arraignment for felony or piracy.'	11	379



LAWS OF NORTH-CAROLINA.

A. D. 1715. CHAP. 1.

An Act to direct the method to be observed in the examination and commitment of criminals.

1. *Be it enacted by his excellency the Palatine, and the rest of the true and absolute lords proprietors of Carolina, by and with the advice and consent of this present General Assembly, now met at Little-River, for the north-east part of the said province, and it is hereby enacted, That from henceforward, no person within this province shall be committed to prison for any criminal matter, until examination thereof be first had before some magistrate; which magistrate shall admit the party to bail, (a) if bailable, and shall record the examination (b) of the party, and also the full matter given in evidence, both against him and for him, with all concurring circumstances; and shall take recognizance, with good and sufficient securities, to our sovereign lord the king, for the informer to appear and prosecute, as the laws of the kingdom of Great-Britain and this province do direct; and likewise for all evidences for the king to appear, and give evidence against the criminal, at the next court, where the matter is cognizable, ensuing such examination: which examination and recognizances so taken, shall be returned to the office of the court wherein the matter is to be tried, under the penalty of five pounds for every neglect; one half to the lords proprietors, (c) and the other half to him or them that shall sue for the same: to be recovered, in any court within this government, by action of debt, bill, plaint, or information; wherein no essoin, protection, injunction, or wager of law, shall be allowed or admitted of.*

No person shall be committed without examination. Magistrate shall admit to bail, if bailable: Shall record the examination and the matter given in evidence, against and for him: Shall take recognizance to prosecute and give evidence: And shall return all to the next court, where the matter is to be tried, under penalty of 5l. for every neglect.
a [All are bailable except for capital offences, &c. Const. sec. 39, page 51.]
b [Declaration of rights, sec. 7, page 41.]
c [To the use of the state. 1777. chap. 115. sec. 83.]

CHAP. 2.

An Act concerning old titles of lands; and for limitation of actions and for avoiding suits in law.

Preamble.

All possessions of or titles to lands derived from creditors, executors or administrators or by husband, &c. or by indorsement of patent, &c. of which the possessor has continued in possession 7 years, without suit, are ratified and declared good, to all intents, against all persons, &c.

Persons hereafter having right shall make claim within 7 years, after right accrued; or be utterly excluded.

Persons under age, feme covert, &c. may bring suit within three years after they come to age, &c.

1. WHEREAS great suit, debate, and controversy hath heretofore been, and may hereafter arise, by means of ancient titles to land derived from patents granted by the governor of *Virginia*, the conditions of which patents have not been performed, nor quit-rents paid, or the lands have been deserted by the first patentees, or for, or by reason, or means of former entries or patents granted in this government; for prevention whereof, and for quieting men's estates, and for avoiding suits in law,

2. *Be it enacted by his excellency the Palatine, and the rest of the true and absolute lords proprietors of Carolina, by and with the advice and consent of this present General Assembly, now met at Little-River, for the north-east part of the said province, and it is hereby enacted by the authority of the same, That all possessions of, or titles to any lands, tenements, or hereditaments whatsoever, derived from any sales made either by creditors, executors or administrators of any person deceased, or by husbands and their wives, or husbands in right of their wives, or by indorsement of patents, or otherwise, of which the purchaser or possessor, or any claiming under them, have continued, or shall continue in possession of the same for the space of seven years without any suit in law, be, and are hereby ratified, confirmed, and declared good and legal, to all intents and purposes whatsoever, against all and all manner of persons: any former or other title, or claim, act, law, usage, or statute to the contrary, in any wise, notwithstanding.*

3. *And be it further enacted by the authority aforesaid, That no person or persons, nor their heirs, which hereafter shall have any right or title to any lands, tenements, or hereditaments, shall thereunto enter or make claim, but within seven years next after his, her, or their right or title which descend or accrue; and in default thereof, such person or persons so not entering or making default, shall be utterly excluded and disabled from any entry or claim thereafter to be made.*

4. *Provided nevertheless, That if any person or persons that is, or hereafter shall be, entitled to any right or claim of lands, tenements, or hereditaments, shall be, at the time the said right or title first descended, accrued, come, or fallen, within the age of twenty-one years, feme covert, non compos mentis, imprisoned, or beyond seas,*

that then such person or persons shall and may, notwithstanding the said seven years be expired, commence his, her, or their suit, make his, her or their entry, as he, she, or they might have done before this act, so as such person or persons shall, within three years next after full age, discoverture, coming of sound mind, enlargement out of prison, or persons beyond seas, within eight years after the title or claim becomes due, take benefit and sue for the same, and at no time after the times or limitations herein specified; but that all possessions held without suing such claim as aforesaid, shall be a perpetual bar against all and all manner of persons (a) whatsoever, that the expectation of heirs may not, in a short time, leave much land unpossessed, and titles so perplexed, that no man will know of whom to take or buy land.

5. *And be it further enacted by the authority aforesaid,* That all actions of trespass, detinue, actions *sur trover*, and replevin, for taking away of goods and chattels; all actions of accout and upon the case; all actions of debt for arrearages of rent; and all actions of assault, menace, battery, wounding, and imprisonment, or any of them, which shall be sued or brought at any time after the ratification of this act, shall be commenced or brought within the time and limitation in this act expressed, and not after: *That is to say,* actions of accout render, actions upon the case, actions of debt (b) for arrearages of rent, actions of detinue, replevin, and trespass *quare clausum fregit*, within three years next after the ratification of this act, or within three years next after the cause of such action or suit, and not after, except such accout as concern the trade of merchandize between merchant and merchant, and their factors or servants; and the said actions of trespass, assault and battery, wounding, imprisonment, or any of them, within one year next after the ratification of this act, or within one year after the cause of such action or suit, and not after; and the said actions upon the case for words, within six months after the ratification of this act, or within six months after the words spoken, and not after.

^b [Extended to debt upon lending or contract without specialty by 1814, c. 879. Extended to bonds, bills and other securities, made negotiable, by 1786, c. 248, sec. 5. Extended to the securities of guardians in 3 years after the orphan comes of age, by 1795, c. 443. Extended to suits on sheriffs' and clerks' bonds if the cause of action accrued before 1810; if afterwards 6 years is the limitation, by 1810, c. 89. Extended to suits on penal statutes, by 1808, c. 743. See also the book debt law, 1756, c. 57.]

Persons beyond seas within 8 years.

All possessions held without suit as aforesaid, shall be a perpetual bar.

a [20 years a bar against the state by 1748, c. 44, sec. 5.—21 years with colour of title a bar against persons claiming under the state, by 1791, c. 346.]

Limitations of actions.

Actions of accout, case, (in general) debt, for arrearages of rent, detinue, replevin, trespass *quare clausum fregit*, to be brought within three years, except accout between merchants, &c.

Trespass, assault and battery, wounding, imprisonment, within one year. Case for words, within 6 months.

If judgment be for the plaintiff and it be reversed; or if on motion in arrest it be that he take nothing by his plaint, &c. or if defendant cannot be attached, &c. plaintiff, &c. may commence a new suit within one year, &c.

In actions of trespass *quare clausum fregit*, if the defendant disclaim he shall be admitted to plead a disclaimer, &c. and the plaintiff shall join issue. If found for the defendant, &c. the plaintiff shall be barred, &c.

In actions for slanderous words, if damages under 40s. the plaintiff shall have no more costs than damages.

Persons under age, &c. may bring suits with-

6. *Provided nevertheless, and it is hereby further enacted*, That if on any the said actions or suits, judgment be given for the plaintiff, and the same be reversed by error, or a verdict pass for the plaintiff, and upon matter alleged in arrest of judgment, the judgment be given against the plaintiff, that he take nothing by his plaint, writ, or bill; or if any of the said actions shall be brought by original writ, and the defendant cannot be attached or legally served with process, that in all such cases, the party plaintiff, his heirs, executors or administrators, as the case shall require, may commence a new action or suit, from time to time, within a year after such judgment reversed, or such judgment given against the plaintiff, or till the defendant can be attached or served with process, so as to compel him to appear and answer.

7. *And be it further enacted*, That in all actions of trespass *quare clausum fregit*, hereafter to be brought, wherein the defendant or defendants shall disclaim in his or their plea to make any title or claim to the lands in which the trespass is by the declaration supposed to be done, and the trespass be by negligence, or involuntary, the defendant or defendants shall be admitted to plead a disclaimer, and that the trespass was by negligence, or involuntary, and a tender or offer of sufficient amends for such trespass before the action brought, whereupon, or upon some of them, the plaintiff or plaintiffs shall be enforced to join issue, and the said issue be found for the defendant, or the plaintiff shall be non-suited; the plaintiff shall be clearly barred from the said action, and all other suits concerning the same.

8. *And be it further enacted by the authority aforesaid*, That in all actions upon the case for slanderous words, to be sued or prosecuted by any person in the general or precinct courts of this government, after the ratification of this act, if the jury, upon the trial of the issue in such action, or the jury that shall inquire of the damages, do find or assess the damages under forty shillings, then the plaintiff or plaintiffs in such action, shall have and recover only so much costs as damages so given or assessed shall amount unto, without any further increase of the same: any law, statute, usage, or custom to the contrary, in any wise, notwithstanding.

9. *Provided nevertheless, and be it further enacted*, That if any person or persons that is or shall be entitled to any such actions of trespass, detinue, actions *sur trover*, re-

plevin, actions of accompt, and upon the case, actions of debt for arrearages of rent, actions of assault, menace, battery, wounding, and imprisonment, actions of trespass *quare clausum fregit*, actions upon the case for slanderous words, be, or shall be at the time of any such cause of action given or accrued, fallen or come within the age of twenty-one years, *feme covert*, *non compos mentis*, imprisoned, or beyond the seas, (a) that then such person or persons shall be at liberty to bring the same actions, so as they bring the same within such times as are before limited, after their coming to or being of full age, discovered, of sound memory, at large, or returned from beyond the seas, as other persons, having no such impediment, might have done. (b)

in the time before limited; after they come to age, &c.

a [The exception enlarged by the absence beyond sea of the defendant, 1804, c. 667.]

b [The operation of this act for certain periods was suspended by 1777, c. 115, sec. 89. and 1783, c. 187, sec. 8.]

CHAP. 5.

Feme Coverts how to pass lands.

See act passed
Sep. 1751, c. 50.

1. WHEREAS the legal way of passing lands where the estate is in a *Feme Covert*, is by fine and recovery; and it having been formerly practicable in this government, (fines and recoveries not being in use here,) that sales have been made by the husband with the wife's consent, and sometimes by sales from them both, and acknowledged in court, the wife being first privately examined by the court, whether she acknowledged the same freely:

2. Be it enacted by his excellency the palatine, and the rest of the true and absolute lords proprietors of the province of Carolina, by and with the advice and consent of the rest of the members of the General Assembly, now met at Little River, for the north-east part of the said province, and it is hereby enacted by the authority of the same, That all such sales which have at any time heretofore been made in manner and form aforesaid, or which hereafter shall be made by the husband and wife, and acknowledged before the chief-justice, or in the court of the precinct where the land lieth, the wife having been first privately examined, (c) before the chief-justice or one of the associate judges, or by some member appointed by the court of the precinct.

All sales heretofore made by husbands, with wife's consent, or by them both &c. or which hereafter shall be made, and acknowledged before c. justice, or in precinct court, the wife being examined, the same shall be valid, as if done by fine, &c. or any other way.

c [Provision where the wife lives in another county, or cannot personally attend, 1751, c. 50, sec. 2. Where she lives out of the state and makes a power of attorney, 1778, c. 510. Where she lives in the U. S. or a territory thereof, 1810, c. 791, sec. 1. Where she lives in foreign parts, *ibid.* sec. 2. Where she lives in the district of Columbia, 1816, c. 927.]

whether she acknowledgeth the same freely, shall be good and effectual against the husband and wife, and their and every of their heirs and assigns, and against all other persons claiming by, from, or under them, or any of them, and that to all intents and purposes, as if the same had been done by fine and recovery, or by any other way or means whatsoever.

Not to be construed to cut off entails hereafter.

3. *Provided always, and it is hereby meant and intended,* That nothing in this act contained, shall be construed or meant to give any power or authority hereafter for cutting off intailed lands: any thing herein before contained to the contrary, in any wise, notwithstanding.

CHAP. 4

An Act for preventing disputes concerning lands already surveyed. (a)

Preamble.

1. WHEREAS disputes do frequently arise concerning lands already surveyed and patented, to the great charge and vexation of many people holding and enjoying those lands; for prevention whereof for the future, and for settling such differences as may hereafter arise:

Lands already surveyed, and patents granted by former governors, &c. good and valid.

1. *Be it enacted by his excellency the palatine, and the rest of the true and absolute lords proprietors of the province of Carolina, by and with the advice and consent of the rest of the members of the general assembly, now met at Little-River, for the north-east part of the said province, and by the authority of the same it is hereby enacted and declared,* That all surveys already made, and patents granted, within this government, by all and every preceding governors, deputy-governors, or presidents, are hereby declared to be good and valid, to all intents and purposes whatsoever; any pretended defects or insufficiency in the powers or authorities for so doing to the contrary, in any wise, notwithstanding: and that patents may and ought to be granted on all and every the aforesaid surveys for which patents are not already granted; those lying within the controverted bounds only excepted.

Patents to be granted on the said surveys.

He that will take up swamp, &c. shall give notice

3. *And be it further enacted by the authority aforesaid,* That no person whatsoever shall take up any marsh,

(a) This act, in Mr. Davis' edition, is said to have been repealed: but I cannot find the repeal in any subsequent act of assembly. Perhaps therefore it may be one of those acts that have been disallowed by the king in council, of which I have been able to obtain no account.—*Iredell.*

swamp, or sunken lands, but shall first give notice, in writing, to the owner of the land adjoining : after notice delivered in writing before evidence, such person or persons shall have six months time to resolve whether he will take up the same or no ; and in case he shall not, before the end of the said six months, take out a warrant to survey such marsh, swamp, or sunken land, as shall be contiguous to his own land, then the first person who gave such notice may survey and patent the same.

4. *And be it further enacted by the authority aforesaid,* That if any person shall believe that there is contained in the survey or patent of any person, more land than the same survey or patent mentions, then, and in such case, such person may employ the surveyor-general, or his deputy, to re-survey such land ; and if it shall appear that the latter survey doth not exceed the former by more than ten acres in the hundred, such shall not be deemed any error, nor the owner of such land put to any charge or trouble in re-surveying or patenting the same ; but the party employing the surveyor shall pay all charges.

5. *And be it further enacted by the authority aforesaid,* That in all cases of differences where any re-survey shall be made, the surveyor shall always proceed by the marked trees, if the same can be found, or by natural bounds if any mentioned ; and if there be not marked trees, then he shall follow the courses mentioned in the plat or patent, so as the intention of the party first taking up may be observed as near as may be ; and if it shall happen that in any re-survey there shall be more land contained above the quantity mentioned, besides ten in the hundred before mentioned in this act, it shall be in the choice of the owner of the land to take the same, paying the surveyor his fee, or to leave out the overplus in such part or place as he pleases ; and then the whole charge to be borne and paid by him that required the survey.

6. *And be it further enacted by the authority aforesaid,* That all surveys or patents hereafter to be made or granted for the land or plantation of any deceased person, the same shall be made and granted in the name of the heir (a) at law, which nevertheless shall not bar any that have title thereto by dower or courtesy, or by the will of the deceased possessor ; but that every title or claim shall stand good and valid in law, as they might

to the owner of the land adjoining, and if he neglects to take it up in 6 months the person giving such notice may.

Land may be re-surveyed ; and if the latter survey doth not exceed the former more than 10 acres in the hundred, to be no error.

Surveyor to go by marked trees or natural bounds, or courses and distance.

Re-survey containing more than 10 per cent. owner may take surplus, or leave it out where he pleases.

Patents for deceased persons' land, to be in the name of the heir at law, and subject to dower, &c.
a [1798, c. 493, 1779, c. 155, sec. 4.]

or ought to have done if the deceased possessor had in his life-time, surveyed and taken out a patent for the same in his own name.

[So much of this act as respects the Queen's peace and the qualification of public officers is omitted.]

How far the laws of England are in force here.

Common law enforced.

See acts, April 1778, ch. 133.

Statutes of England enforced.

[See the declaration of rights, & constitution.]

a [For other statutes in force, see 1777, c. 115. s. 35. 1778. c. 133.]

CHAP. 5.

An act for the more effectual observing of the Queen's peace, and establishing a good and lasting foundation of government in North-Carolina.

1. And whereas, this province is annexed to, and declared to be a member of the crown of England; yet notwithstanding, disputes do often arise concerning the laws of England how far they are in force in this government; and it appearing by the charter, that the powers therein granted of making laws, are limited with this expression, viz. "*Provided*, such laws be consonant with reason, and as near as may be, agreeable to the laws and customs of our kingdom of England." From thence it is manifest, that the laws of England are the laws of this government, so far as they are compatible with our way of living and trade:

2. *Be it therefore enacted by the authority aforesaid, and it is hereby enacted and declared*, That the common law is, and shall be, in force, in this government, except such part in the practice, in the issuing and return of writs, and proceedings in the court of Westminster, which for want of several officers cannot be put in execution; which ought to be supplied by rules of the general court of this government, being first approved of by the governor and council, which shall be good in law, from time to time, till it shall be altered by act of assembly.

3. *And be it further enacted and declared by the authority aforesaid*, That all statute laws of England, providing for the privileges of the people, as also, all statute laws made for limitation of actions, and preventing of vexatious law suits, and for preventing immorality and fraud, and confirming inheritances and titles of land, are and shall be in force here, although this province, or the plantations in general, are not therein named. (a)

CHAP. 6.

an Act to regulate divers abuses in the taking up of lands, and to ascertain the method to be observed from henceforth, in taking up and surveying lands. (a)

1. WHEREAS of late years, great inconveniences have arisen by means of the irregular proceedings and methods observed in entering and taking up land, and by some persons holding or pretending right to large tracts of land; to the great discouragement of strangers coming in to inhabit among us, and to the great weakening of places already settled and inhabited, as well as to the great loss and prejudice of the lords proprietors: for prevention whereof for the future, and for the better regulating the method of taking up lands in time to come;

2. *Be it enacted by his excellency the Palatine, and the rest of the true and absolute lords proprietors of Carolina, by and with the advice and consent of this present General Assembly, now met at Little-River, for the north-east part of the said province, and it is hereby enacted by the authority of the same, That from and after the first day of January next ensuing the date hereof, no surveyor-general, nor deputy surveyor, shall enter any land for any person after the manner as has been of late years observed; but that all persons whatsoever that shall, from thenceforward, be minded to take up any lands in this government, shall before he lays claim thereto, take a warrant from the secretary's office (b) directed to the surveyor-general, or deputy, as usual, mentioning the quantity of land by them intended to be taken up; which warrant he shall deliver to the said surveyor-general, or his deputy, together with an account where the land lies which he intends to take up by that warrant, which the surveyor shall indorse upon the back of the said warrant, together with the time of his receipt thereof, and give a copy of the said indorsement to the said person; for which it shall be lawful for him to demand and receive the usual fee of entry and copy; and shall, within eight months next after such receipt, survey and make return of the said land, with the warrant, as is usual, unless he shall give sufficient reason, upon his oath, for not doing the same: *Provided always*, That he hath no warrant before lodged in his hands for the same land: *And provided also*, That if occasion be, the surveyor shall be impowered to hire chain-carriers (c)*

Preamble:

Method to be observed in taking up and surveying lands.

b [Entry takers appointed by 1777, c. 114, & also a surveyor for each county. A particular description of the land entered required. Ibid sec. 5.]

c [No survey shall be made without chain carriers. Ibid. sec. 10.]

(a) This act is circumstanced in the manner with c. 4. It is said, in Mr. Davis' edition, to have been repealed, but I cannot find the authority for that assertion.—*Iredell*.

and markers for his assistance in laying out of any lands, and shall charge the same to the owner of such land.

If on rivers or
creeks.

[See 1777, 114,
sec. 10.]

If in the woods.

Surveyors not
to lay out more
than 640 acres
in one tract,
nor two tracts
for one person
within two miles

a [1777, c. 114,
sec. 3.]

3. *And be it further enacted by the authority aforesaid,* That the surveyor-general, and his deputy, shall observe, in surveying and laying out of all lands to be taken up from henceforward, that lies on a navigable river or creek, that he shall run a full mile on a direct course into the woods, and each opposite line shall run parallel with the other, if it can be admitted, for other people's lines, or rivers or creeks: and for all lands taken up wholly in the woods, the survey shall be upon a square, if it can be admitted, as aforesaid.

4. *And be it further enacted by the authority aforesaid,* That no surveyor, or deputy-surveyor, from and after the time aforesaid, shall survey or lay out more than six hundred and forty (a) acres of land in one tract, nor shall survey or lay out two several tracts of land for any one person within two miles at least, of each other, unless by particular warrant from the lords proprietors for that purpose. (b)

b [1, 1784, c. 202, sec. 2, on great swamps in the E. parts of the state, all may be in one survey; and also joint entries, sec. 3.]

CHAP. 7.

The appointment of Registers is provided for by 1777, c. 118, s. 13, &c.

No conveyance of land, except mortgage, good, unless acknowledged, &c. and registered within 12 months.

An act to appoint Public Registers, and to direct the method to be observed in conveying lands, goods, and chattels; and for preventing fraudulent deeds and mortgages.

1. *And be it further enacted, &c.* That no conveyance or bill of sale for lands, (other than mortgage,) in what manner or form soever drawn, shall be good and available in law, unless the same shall be acknowledged by the vendor, or proved by one or more evidences, upon oath, either before the chief justice for the time being, or in the court of the precinct where the land lieth, and registered by the public register of the precinct where the land lieth, within twelve months after the date of the said deed, (c) and that all deeds so done and ex-

(c) The acts extending the time,
are

1741, c. 34, one year.

1748, c. 44, one year.

1756, c. 58, 18 months & 2 years.

1760, c. 67, 18 months.

1764, c. 73, 18 months.

1766, c. 80, 18 months.

1770, c. 90, 2 years.

1773, c. 102, 2 years.

1777, c. 110, 2 years.

1780, c. 165, 2 years for grants.

1782, c. 174, 2 years,

1783, c. 193, 2 years for grants.

1784, c. 20, 2 years for grants.

1786, c. 257, 2 years for grants and deeds not issued from lord Granville's office.

1788, c. 291, 2 years for deeds and grants.

1790, c. 328, 2 years for deeds and grants.

1795, c. 438, 2 years lord Granville's deeds and grants. [1796,

ecuted, shall be valid, and pass estates in land, or right to other estate, without livery of seizen, attornment, or other ceremony in the law whatsoever.

2. *Provided always*, That all deeds or conveyances of lands, tenements, or hereditaments, goods or chattels, which are already passed, and registered, or which shall be registered within one year after the ratification of this act, for which a good and valuable consideration has been actually and *bona fide* paid, shall be good and available in law and equity, to purchasers, and their heirs, against the vendors, and their heirs, and all others claiming by, from, or under them, in as full and ample manner, to all intents, constructions, and purposes, as if such title had been made either by fine, common recovery, livery of seizen, attornment, or any other ways used and practised within the kingdom of Great-Britain

3. *And be it further enacted by the authority aforesaid*, That all deeds and conveyances of land lying within this government, made in foreign parts, which shall be remitted hither, and proved before the chief justice, or court of the precinct where the land lieth, in manner as before directed; or which shall be personally acknowledged or proved before the chief magistrate of any city, town, or corporation, within the king of Great-Britain's dominions, and an attestation thereof affixed thereto; or which shall be acknowledged or proved before the governor or commander in chief of any of his majesty's plantations, and attested under the public seal, and registered in the aforesaid office of the precinct where the land lieth, within one year after the arrival of such deeds; shall be good and valid in law, to all intents and purposes, as if made and executed within this government.

Deeds so executed to be valid.

Deeds already passed for valuable considerations, and registered within a year, declared good.

Deeds made in foreign parts, & proved as before; or acknowledged, &c. before the chief magistrate of any city, &c. or governor of any plantation, &c. and registered within a year after arrival, to be good & valid. [See acts of congress of May 1790—March, 1804.]

1796, c. 459, 2 years for deeds and grants.	1806, c. 705, 2 years for deeds and grants.
1798, c. 507, 2 years for deeds and grants.	1808, c. 762, same.
1800, c. 554, 2 years for deeds and grants.	1809, c. 784, extending former act 2 years.
1800, c. 55, extending former act for two years.	1810, c. 803, same.
1802, c. 621, 2 years for deeds and grants.	1812, c. 84, same.
1804, c. 648, same.	1813, c. 860, extending former act 2 years.
1804, c. 671, extending former act 2 years.	1814, c. 875, deeds and grants.
	1816, c. 908, 2 years for deeds and grants.
	1818, c. 967, 2 years for deeds and grants, &c.

a [Devises void against creditors, 1789, c. 311, s. 2. Conveyances against widows, 1784, c. 204, s. 8.]

Feoffments, gifts, &c. made for any fraudulent intent, shall be good only against the person making the same, &c.

Parties to such fraudulent deeds, &c. in certain cases, to forfeit the value thereof.

b [A summary note of avoiding them, 1793, c. 389, s. 4, 1806, c. 700.]

c [The State, 1777, c. 115, s. 85.]

4. And for the avoiding and abolishing of feigned, covinous, and fraudulent feoffments, gifts, grants, alienations, conveyances, (*a*) bonds, suits, judgments, and executions, as well of lands and tenements, as of goods and chattels, which of late have been, and still are devised and contrived, of malice, fraud, covin, or collusion, to the end, purpose, and intent, to delay, hinder, and defraud creditors and others of their just and lawful actions, debts, and accompts : *It is hereby further enacted*, That all and every feoffment, gift, grant, alienation, bargain, and conveyance of lands, tenements, hereditaments, goods and chattels, or any of them, by writing, or otherwise ; and all and every bond, suit, judgment, and execution, at any time had or made since the first day of January, A. D. 1714, or at any time hereafter to be had or made, to or for any intent or purpose last before declared and expressed, shall be, from henceforward, deemed and taken, (only as against that person or persons, his or their heirs, executors, administrators, and assigns, and every of them, whose actions, suits, debts, accompts, damages, penalties, and forfeitures, shall release by such covinous or fraudulent devices and practices, as is aforesaid, or shall or might be, in any wise, disturbed, hindered, delayed or defrauded,) to be clearly and utterly void, frustrate, and of no effect ; any pretence, colour, feigned consideration, expressing of use, or any matter or thing to the contrary, notwithstanding.

5. *And be it further enacted the authority aforesaid*, That all and every the parties, *by* to such feigned, covinous, or fraudulent feoffments, gifts, grants, alienations, bargain, conveyance, bonds, suits, judgments, executions, or other things before expressed, (*b*) and being privy and knowing of the same, or any of them, which at any time after the first day of August next coming, shall, wittingly and willingly, put in use, maintain, avow, justify, or defend the same, or any of them, as true, simple, and done, had, or made *bona fide*, and upon good consideration ; or shall alien or assign any the lands, tenements, goods, or things before mentioned, to him or them conveyed, as is aforesaid, or any part thereof ; shall incur the forfeiture of the real value of the lands and tenements, goods and chattels ; one moiety thereof to the lords proprietors. (*c*) and the other moiety to the party grieved, and intended to be defrauded thereby.

6. *Provided always, and be it further enacted by the authority aforesaid,* That this act, nor any thing herein before contained, shall not extend or be construed to impeach, defeat, or make void any conveyance or assurance, interest, limitation of use, or uses, of, in, to or out of any lands or tenements heretofore at any time had or made, or hereafter to be *bona fide* made, upon and for good considerations, to any person or persons whatsoever; any thing before mentioned to the contrary, notwithstanding.

Not to make void any conveyance *bona fide* made.

7. And for the prevention of frauds by double mortgages and conveyances of lands, negroes, goods and chattels: *Be it further enacted by the authority aforesaid,* That every mortgage of lands, tenements, goods, or chattels, which shall be first registered in the register's office of the precinct where the land lieth, or of goods and chattels where the mortgager liveth, shall be taken, deemed, judged, allowed of, and held to be the first mortgage, and to be good, firm, substantial, and lawful, in all courts of justice within this government; any former or other mortgage of the same lands, goods, or chattels, not before registered, notwithstanding; unless such prior mortgage be registered within fifty days after the date.

Mortgage first registered shall be deemed the first mortgage,

Unless first mortgage be registered within 50 days.

8. *Provided always, and be it further enacted by the authority aforesaid,* That in case more than one mortgage shall happen to be made and be in force at one time, of the same lands and tenements, goods and chattels, the several mortgagees which have not registered their mortgages, their heirs, executors, administrators, or assigns, shall have power to redeem any mortgage or mortgages registered, upon paying the principal debt, interest, and costs of suit, to the prior mortgagee or mortgagees, their heirs, executors, administrators, or assigns: and as a punishment for such intended fraud or covin, every person or persons which shall mortgage the same lands, tenements, goods, or chattels, a second time, a former mortgage being in force and not discharged, shall have no power or liberty of redemption in equity or otherwise.

If more mortgages than one, such as have not registered may redeem those that are, paying principal, &c.

Persons making a 2d mortgage, the 1st being in force, to have no relief in equity.

9. *Provided also,* That nothing in this act contained shall be construed, deemed, or extended, to bar any widow of any mortgager of such lands or tenements, from her right of dower to the said land, who did not legally join with her husband in such mortgage, or otherwise bar or exclude herself from such her dower of right.

Not to bar widow from dower who did not join in the deed, &c.

Prior purchaser
or mortgagee to
register before
1st Jan. 1716,
&c.

10. *And be it further enacted by the authority aforesaid,* That every prior purchaser, or mortgagee, of any lands or tenements, goods or chattels, which shall not, before the first day of January, 1716, register his title or mortgage as aforesaid, if after that time a second deed of sale, conveyance, or mortgage, be registered before the prior, such person so neglecting shall take no advantage or benefit of such purchase or mortgage already signed and sealed.

Register, when
there is no pa-
rish clerk, to re-
gister births,
marriages and
burials.

11. *And be it further enacted by the authority aforesaid,* That the register aforesaid of every precinct, when there is no clerk of the church in that precinct, shall register all births, marriages, and burials, within the precinct whereof he is register; and that every master or mistress of a family who shall neglect to register the birth or death of any person born or dying within his or her house or plantation; and every married man who shall neglect to remit to the said register a certificate of his marriage, and cause the same to be registered, for longer than one month; each master or mistress, or married man, so neglecting, shall forfeit and pay, to the said register, one shilling *per month* for every month so neglected; provided the whole do not exceed twenty shillings.

Persons neg-
lecting to regis-
ter, forfeit 1s.
per month to
the register;
not to exceed
20s.

Penalties how
to be recover'd.

12. *And be it further enacted by the authority aforesaid,* That all penalties and forfeitures in this act mentioned, shall be recovered, by bill, plaint, or information, in any court of record in this government; wherein no injunction, protection, or wager of law, shall be allowed or admitted of.

CHAP. 8.

An Act to appoint toll-books to be kept at or near Catharine's creek, in Chowan precinct, at the head of Perquimons precinct, and at the mouth of the north-west river, in Currituck precinct; and to prevent persons from transporting or driving horses, cattle, or hogs, to other persons lands.

1. WHEREAS divers persons, inhabitants of *Virginia*, frequently coming into this government to purchase cattle or hogs, it may be greatly feared they may drive away cattle or hogs which they have not purchased; and whereas, divers persons, as well inhabitants of this government as of *Virginia*, do very often drive, lead, or carry horses, cattle, or hogs, to other persons' lands, where they suppose is better herbage or mast than on that whereon they are dwellers: for prevention whereof;

2. *Be it enacted by his excellency the palatine, and the rest of the true and absolute lords proprietors of the province of Carolina, by and with the advice and consent of the rest of the members of the General Assembly, now met at Little-River, for the north-east part of the said province, and it is hereby enacted by the authority of the same, That there shall be at Catharine's creek, (a) in Chowan precinct, at the head of Pequimon river, and at the mouth of the north-west river, in Currituck precinct, persons appointed by the governor or commander in chief for the time being, to keep toll-books; and all persons, whether drivers, purchasers or owners of cattle or hogs, shall be obliged to enter in the toll-book every beast or hog, with their mark and distinction, and of whom purchased: and that what person soever shall drive cattle or hogs to Virginia, and shall neglect to enter the same in the respective toll-books, according to this act, shall forfeit every such beast or hog which shall be so omitted as aforesaid; and if such beast or hog be not to be had, the person so omitting shall forfeit and pay the sum of forty shillings; to be recovered by warrant from the next justice of the peace.*

Toll books to be kept.

a [Places and fees extended 1722, c. 11.]

All cattle, &c. to be entered, on penalty of such cattle, &c. or 40s.

3. *And be it further enacted, That every purchaser, owner, or driver of cattle and hogs, shall pay, unto the person so appointed to keep the said toll-book, two pence for every beast, and one penny for every hog, which shall be so driven and entered in the said toll-book.*

For entering every beast, 2d. and every hog, 1d.

4. *And be it further enacted by the authority aforesaid, That if any person or persons whatsoever, either inhabiting in Virginia or this government, shall after the ratification of this act, presume to drive, lead, transport, or carry any cattle, horses, or hogs, to range upon any persons lands, (b) shall forfeit and pay the sum of ten pounds: and that no person or persons whatsoever, inhabiting in this government, shall give leave to any other person or persons, either inhabitant or foreigner, to turn loose, drive, or put on his land, any horses, cattle, or hogs, under the like penalty of ten pounds.*

No person to drive stock to range on other people's land; nor no person to give liberty, &c. on penalty of 10l.

5. *And be it further enacted by the authority aforesaid, That no foreigner whatsoever, either by consent or permission of any other person or persons inhabiting in this government, or otherwise, shall presume or offer to*

No person to bring stock into this province to winter, on penalty of 20l.

b [Stock of any inhabitant of another government being found on land in this shall be deemed to be driven there by the owners. 1729, c. 19, sec. 4.]

None to be deemed inhabitants who do not reside on their lands, or keep them tenanted.

Ranger, &c. to make distress.

a [For the mode of proceeding see 1729, c. 19.]

Penalties how to be disposed, and how recovered.

b [County, 1777, c. 115, s. 83.]

drive, lead, or bring into this government, any stocks of cattle, hogs, or horses, with intention to winter them here, or to destroy the herbage or mast; under the penalty of twenty pounds: and it is hereby meant and intended, and so shall be understood and taken, that no person shall be deemed an inhabitant that holds lands by entry, survey, or patent, but such as actually and constantly reside on such lands, or keep the same always tenanted, cultivated and improved.

6. *And be it further enacted by the authority aforesaid,* That the ranger of each precinct or division where such offence shall be committed, or on his default, the keeper of the toll-book, is hereby appointed to make distress (a) of such cattle, hogs, or horses, of any person or persons offending; the one half of which fine or forfeiture shall be to the ranger, or keeper of the toll-book, whichsoever shall make the distress, and the other half to the churchwardens and vestry, for the use of the parish where the offence shall be committed.

7. *And be it further enacted by the authority aforesaid,* That all fines and forfeitures in this act mentioned, and not herein and hereby expressly and particularly mentioned to whom they shall be paid, and how to be recovered, shall be, one half to the churchwardens and vestry, for the use of the parish (b) where the offence shall be committed, and the other half to him or them that shall sue for the same, in any court of record in this government, by bill, plaint, or information; wherein no essoin, protection, wager of law, or injunction, shall be allowed or admitted of. (c)

c [See 1766, c. 81, s. 2—1795, c. 439.]

CHAP. 9.

Private Burials prohibited.

Burial places to be set apart.

1. *Be it enacted by his excellency the palatine, and the rest of the true and absolute lords proprietors of Carolina, by and with the advice and consent of this present General Assembly, now met at Little-River, for the north-east part of the said province, and by the authority of the same it is hereby enacted,* That every planter, owner, attorney, or overseer of every settled plantation in this government, or that hereafter shall be settled, shall set apart a burial

place, and fence the same, for the interring all such Christian persons, whether bond or free, that shall die on their plantation ; and that before the interring, there shall be called at least three or four of the neighbours to view the corpse : and if it appears to them that the person came to his or her death by any violence or unlawful means, notice thereof shall be given forthwith to the coroner of the precinct, so that proceedings may be had thereon according to law : and in case any of the persons so called shall refuse to come and view, he or she so refusing, shall forfeit and pay the sum of five shillings ; to be levied by a warrant from the next justice of the peace, and paid to the churchwardens, for the use of the poor of the said parish. (a)

2. And be it further enacted by the authority aforesaid, That if any person so dying shall be buried contrary to the true intent and meaning of this act, the person or persons occasioning the same, shall forfeit and pay the sum of ten pounds ; one third to the informer, one third to the lords proprietors, (b) and the other third to the poor ; to be recovered, by bill, plaint, or information, in the general court of this government ; wherein no essoin, protection, or wager of law, shall be allowed : unless such persons, in their lifetime, signified their desire of being interred elsewhere ; or unless the person concerned in such burial can make it appear, that so many of the neighbourhood refused to come, on notice given them, to appear and view the corpse, or that he could not, without great travel and expense, or damage to the corpse, keep it any longer.

Persons how to be buried.

On suspicion of violence, coroner to be informed.

Persons refusing to come & view, to forfeit 5s.

a [County, 1777, c. 115, s. 8.]

Persons burying contrary to this act, to forfeit 10l. unless the deceased desired to be buried elsewhere, &c.

b [State, 1777, c. 115, s. 83.]

CHAP. 10.

An act concerning proving wills, and granting letters of administration ; and to prevent frauds in the management of intestates estates.

1. Be it enacted by his excellency the palatine, and the rest of the true and absolute lords proprietors of the province of Carolina, by and with the advice and consent of the rest of the members of the General Assembly, now met at Little-River, for the north-east part of the said province, and it is hereby enacted by the authority of the same, That all wills and administrations heretofore proved and granted by the council, general court, precinct court,

Former probates validated.

or by any powers or commissions heretofore granted by any governor, deputy-governor, president and council, to any particular person or persons, shall be deemed, adjudged, and taken to be good and effectual, to all intents and purposes whatsoever, as if proved before, or granted by, any ordinary or other ecclesiastical judge or person.

How wills, &c.
may be proved.

2. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the governor or commander in chief for the time being, the general court, or precinct court, to have wills (*a*) proved before them, and to grant orders for administration.

Letters testa-
mentary, &c.
how granted.

3. *Provided always,* That the same be not repugnant to the rules and methods prescribed by this act; *And provided also,* that the granting letters testamentary, or letters of administration, always excepted; which shall be always, from and after the ratification of this act, signed by the governor or commander in chief for the time being, and sealed with the colony seal, and only issuing out of the secretary's office, and countersigned by the secretary, or his deputy.

No person to
administer till
letters granted
by the gover-
nor, on penalty
of 50*l*.

4. *And be it further enacted by the authority aforesaid,* That no person do presume to enter upon the administration (*b*) of any deceased person's estate, until they have obtained such commission of administration, or letters testamentary, signed by the governor, under the penalty of fifty pounds; one half to the informer, and the other half to the governor (*c*) or commander in chief for the time being, to be recovered, by bill, plaint, or information, in the general court of this province; wherein no essoin, protection, or wager of law, shall be allowed or admitted of.

Secretary not
to issue letters
testamentary,
till executors
are sworn; nor
of administra-
tion, till admin-
istrators take
the oath and
give bond.

5. (*d*) *And be it further enacted by the authority aforesaid,* That the secretary or his deputy, shall not affix the colony seal, or subsign any letters testamentary, without taking the executor's oath, for performing the will of the deceased; unless certificate is made by a justice of the peace, that the same oath is taken before him; or letters of administration, without the administrator has

a [County Courts to make order for probate of wills, &c. 2, 1777, c. 115, s. 57. Probate of nuncupative wills, 1774, c. 204. Of written wills, 1784, c. 225, s. 6.]

b [Special administration to be granted, 1816, c. 915.]

c [State, 1777, c. 115, s. 83.]

d [See 1777, c. 115, s. 57—1791, c. 341.]

taken the oath of an administrator, and has also given sufficient bonds, (a) with two or more able sureties, taken either before the secretary, or the justices of the precinct court, and returned into the secretary's office, (respect being had to the value of the estate,) in the name of the governor or commander in chief for the time being, with the condition in form and manner following, *mutatis mutandis, viz :*

a [An executor who resides out of the state, or is about to remove must give bond. 1807, c. 730—1813, c. 855.]

The condition of this obligation is such, That if the above bounden *A. B.* administrator of all and singular the goods and chattels, rights and credits, of *C. D.* deceased, do make, or cause to be made, a true and perfect inventory (b) of all and singular the goods and chattels, rights and credits of the said deceased, which have, or shall come to the hands, possession or knowledge of him the said *A. B.* or into the hands and possession of any other person or persons for him, and the same so made, do exhibit, or cause to be exhibited, into the secretary's office, and one attested copy thereof to the precinct court, where orders for administration passed, within ninety days after the date of these presents; and the same goods, chattels, and credits, and all other the goods, chattels, and credits of the said deceased, at the time of his death, or which at any time after shall come to the hands or possession of the said *A. B.* or into the hands or possession of any other person or persons for him, do well and truly administer according to law; and further, do make, or cause to be made, a true and just account of his said administration, within one year after the date of these presents, and all the rest and residue of the said goods, chattels, and credits, which shall be found remaining upon the said administrator's account, the same being first examined and allowed of by the governor and council, general court, or precinct court, shall deliver and pay unto such person or persons, respectively, as the same shall be due unto, pursuant to the true intent and meaning of this act; and if it shall appear that any last will and testament was made by the deceased, and, by the executor or executors therein named, do exhibit the same into court, making request to have it allowed and approved accordingly, if the said *A. B.* above bound being thereunto required, do render and deliver the said letters of administration (approbation of such testament being first had and made,) in

Condition of the bond.

b [Inventory & account sales to be returned, 1723, c. 15, s. 2.]

the said court; then this obligation to be void, and of none effect: or else to remain in full force and virtue.

Bonds to be assigned to the party injured.

a [Need not be assigned, 1791, 341.]

Administration to whom granted.

b [In the state, 1792, c. 364, s. 1.]

Creditors to make their claim in 7 years, or be barred.

c [See 1799, c. 536, s. 1.]

Which bonds are hereby enacted and declared to be good, to all intents and purposes and pleadable in any courts of justice; and shall be transferred or assigned (*a*) by the governor or commander in chief for the time being, to any person or persons injured, who shall and may maintain an action thereon.

6. *And be it further enacted by the authority aforesaid,* That where any person shall die intestate, administration shall be granted to the next of kin to the deceased, provided such person make claim for the same, in the secretary's office, or precinct court, before the next general court following the death of the intestate, before which time administration shall not be granted to any person; and for want of such, to the greatest creditor, (*b*) proving his debt, upon oath, before the governor or commander in chief for the time being, the general, or precinct court.

7. *And be it further enacted by the authority aforesaid,* That creditors of any person deceased, shall make their claim within seven years after the death of such debtor; otherwise such creditor shall be forever barred. (*c*)

ANNO REGNI GEORGII I.

At a general biennial Assembly, held at Edenton, in Chowan precinct, the second day of October, one thousand seven hundred and twenty-two, and continued by several adjournments, to the nineteenth day of the same month.

CHAP. 11.

An additional Act to an Act, entitled, an Act appointing Toll-Books.

See 1715, c. 8.

1. WHEREAS an act, entitled, an act for appointing toll-books to be kept in this government, has been passed; and the said act has been rendered useless by reason of the places appointed by it for toll-books to be kept being inconvenient, and the fees allowed to such persons as are appointed to keep them so small, that no person will take the trouble of the said office on himself: wherefore it is prayed, that an act may be made for the continuance of the said act, and that there be fixed places appointed for the toll-keepers in the several precincts, and that the said toll-keepers' fees be raised:

2. *Be it therefore enacted by his excellency the palatine, and the rest of the true and absolute lords proprietors of Carolina, by and with the advice and consent of this present General Assembly, now met at Edenton, on Queen Anne's creek, in Chowan precinct, for the north-east part of the said province, and it is hereby enacted by the authority of the same, That the toll-office for the precinct of Chowan, be kept at the head of Catharine's creek, near Mr. Thomas Speight's, at the head of Perquimons, and at Maycock creek in Currituck precinct; for Bertie precinct, at Boon's ferry, and such other places as the precinct court shall appoint: and that every toll-keeper shall be allowed the sum of four pence for each hog, and six pence a head for all cattle, carried or transported out of this government, by all persons carrying or transporting the same, under the like penalty as in the said act is mentioned; and the said toll-keepers are to observe all articles and clauses in the said act mentioned, under the like pains, fines, and penalties therein expressed.*

Toll offices
where to be
kept.

Toll-keeper's
fees.

CHAP. 12.

An Act appointing that part of Albemarle county, lying on the west side of Chowan river, to be a precinct, by the name of Bertie precinct.

1. *WHEREAS* that part of Albemarle county lying on the west side of Chowan river, being part of Chowan precinct, is now inhabited almost to the utmost of the said county westward, and by reason of the remote situation thereof, the inhabitants, which are growing very numerous, cannot, without too great inconveniency, be continued any longer as part of Chowan precinct: Wherefore,

2. *Be it enacted by his excellency the palatine, and the rest of the true and absolute lords proprietors of the province of Carolina, by and with the advice and consent of the rest of the members of the General Assembly, now met at Edenton, at Queen Anne's creek, in Chowan precinct, for the north-east part of the said province, and it is hereby enacted by the authority of the same, That that part of Albemarle county lying on the west side of Chowan river, being part of Chowan precinct, bounded to the northward by the line dividing this government from Virginia, and to the southward by Albemarle sound, and Morattuck ri-*

Bertie precinct
erected.

ver, as far up as Welch's creek, and then including both sides of the said river, and the branches thereof, as far as the limits of this government, be, and the same is hereby declared to be erected into a precinct, by the name of Bertie precinct, in Albemarle county; with all and every the rights and privileges, and other benefits and advantages whatsoever, as any other of the four precincts in Albemarle county can or may have, use, or enjoy.

CHAP. 13.

An Act for settling the precinct courts, and court-houses.

1. WHEREAS through the great taxes and charges this government hath laboured under, by means of the late Indian war, there has been no care taken by preceding assemblies, to settle the several precinct courts to any fixed or certain place, but have always hitherto been kept and held at private houses, where they have been, and are liable to be removed, at the pleasure of the person or persons owning such houses; to the great annoyance of the magistrates and people: for the prevention of which for the future;

Justices to purchase land to build court-houses on.

[See 1741, c. 33—1795, c. 433, s. 1—1797, c. 488—1798, c. 517.]

2. *Be it enacted by his excellency the palatine, and the rest of the true and absolute lords proprietors of the province of Carolina, by and with the advice and consent of the rest of the members of this present General Assembly, now met at Edenton, at Queen Anne's creek, in Chowan precinct, for the north-east part of the said province, and it is hereby enacted by the authority of the same, That from and after the ratification of this act, the justices of the peace that are now appointed for and in every respective precinct in this government, or shall hereafter be appointed within the time limited in this act for building the precinct court-houses, or the greatest part of them, are hereby required and empowered to purchase the quantity of one acre of land, in such place and places of their several precincts, as in and by this act is hereby nominated and appointed, for the erecting the said court-houses on.*

Justices to lay a tax, for building the said court-houses.

[See 1795, c. 433, s. 1—1816, c. 911.]

3. And for the better enabling the said justices, or the greatest part of them, to purchase such lands, and build the said court-houses; *Be it enacted by the authority aforesaid, That the said justices, or the greatest part of them, shall have full power and authority to raise money, by a poll-tax on the several inhabitants of their respec-*

tive precincts, for the purchasing such lands, and building the said court-houses thereon, not exceeding the sum of five shillings *per poll, per annum*; which said tax or levy shall be paid to them the said justices, or whom they, or the greatest part of them, shall appoint to receive the same, by each and every person respectively, in the same manner and form as they do their public levy, and under the same fines and forfeitures.

4. *And be it further enacted by the authority aforesaid,* That if the justices, or the major part of them, in their several precincts, shall neglect or refuse to purchase the land by this act directed for building the several court-houses on, or to agree with workmen to build and finish the same, (which shall not be less than twenty-four feet long and sixteen feet wide,) within six months after the ratification of this act; that then, and in such case, the governor or commander in chief for the time being, shall, and he is hereby empowered and directed, to nominate and appoint such person or persons in each and every precinct so neglecting or refusing; which persons so appointed, shall have the same power and authority to lay the said tax, purchase such land, and build the said court-houses, as the said justices might or ought to have had by this act.

Justices neglecting to build court-houses, governor to appoint other persons to do it.

5. *And be it further enacted by the authority aforesaid,* That the lands hereafter mentioned be, by the several justices or the major part of them, in each respective precinct, purchased, to and for the building and erecting the several court-houses on: *That is to say;*

Places for building court-houses on.

For the precinct of Chowan, at Edenton.

For the precinct of Pequimons, at Jonathan Felp's point, at the mouth of the Narrows.

For the precinct of Currituck, on the land of Mr. William Peyner, next to the land of Mr. William Parker; or at Mr. Parker's, as the justices shall appoint.

For the precincts of Beaufort and Hyde, at Bath-town.

For the precinct of Craven, at Newbern.

For the precinct of Carteret, at Beaufort town.

For the precinct of Bertie, now by this assembly laid out, at some convenient place at Abotskey, where the justices shall appoint.

For the precinct of Pasquotank, at such place as the justices shall appoint.

SIGNED BY

WILLIAM REED, *Esq. President.*

CHR. GALE,

RICHARD SANDERSON,

JOHN LOVICK,

THOMAS LOVICK,

Lords Proprietors' Deputies.

EDWARD MOSELY, *Speaker.*

ANNO REGNI GEORGII I.

Wm. Reed,
Esq. President.

At a general Biennial Assembly, held at Edenton, in Chowan precinct, the twenty-third day of November, one thousand seven hundred and twenty-three.

CHAP. 14.

An Act for settling the titles and bounds of lands. (a)

Persons whose lands have been twice processioned, deemed sole owners.

1. *And be it further enacted by the authority aforesaid,* That all and every person whose lands shall be processioned to him, according to the directions of this act, at two several times, such person shall be deemed and adjudged to be the sole owner of the said lands; and that upon any suit commenced for any such lands, the party in possession may plead the general issue, and give this act in evidence.

Not to bar persons under age, feme coverts, &c.

b [For the mode of proceeding, see 1792, c. 65—1799, c. 541—1804, c. 670—1816, c. 923.]

2. *Provided always,* That the processioning (b) of the lands of a tenant for life, shall not bar or preclude the heir in reversion or remainder; neither shall any processioning bar or preclude persons under age, *feme coverts, non compos mentis*, imprisoned, or out of the government: but that all such person or persons shall have free liberty to sue for and dispute the title and bounds of any lands within this province; provided that the said person or persons commence suit and prosecute the same, within the time already limited by the laws of this government, after the removal of such disability.

a [The first part of this act is provided for by subsequent acts and therefore omitted.]

CHAP. 15.

An additional act, entitled, An act concerning proving wills, and granting letters of administration; and to prevent frauds in the management of intestates' estates.

1. **WHEREAS** it has been customary for executors [See act of 1715, c. 10, s. 5.] or administrators to bring the estates of deceased persons to appraisements, which appraisements have generally been much short of the true value of the same; to the great detriment of the creditors and kindred of the person deceased: for prevention of the like for the future;

2. *Be it enacted by his excellency the palatine, and the rest of the true and absolute lords proprietors of the province of Carolina, by and with the advice and consent of the rest of the members of the General Assembly, now met at Eaenton, for the north-east part of the said province, and it is hereby enacted by the authority of the same, That from and after the ratification of this act, all and every executor or executrix, administrator or administratrix, shall, sometime before or at the next precinct court, after his, her or their entering on the administration of any deceased person's estate, draw, or cause to be drawn, a just, true and perfect inventory of all the goods and chattels of the deceased, (such only excepted as by the afore-mentioned former law are reserved to remain to the use of orphans not of age till they arrive to full age, or such as are by special legacies particularly bequeathed;) which inventories shall be exhibited at the respective courts of the precinct in which the said goods are, and attested, on oath, by the persons exhibiting the same; and a copy of which inventory so exhibited and attested, the executor or administrator shall cause to be affixed at the court-house door of the precinct, during the court's sitting, giving notice, that on the — day of — (which shall be some days before the next succeeding court.) the said goods will be exposed to public sale, to the highest bidder, at the place where the said goods are reserved and kept, and the executors or administrators shall, on oath, render a true account of such sale to the next court immediately succeeding such sales, and shall accordingly be accountable for the same to such persons as in the afore-mentioned former law is provided.*

Deceased persons' estates, how to be sold.

[The part requiring a copy of the inventory to be affixed at the court-house door, repealed by 1793, c. 391.]

3. And in case the estate of any person deceased shall be so far indebted as that the debts cannot be discharged by the sale of what are deemed perishable commodities;

All the estate of deceased persons to be sold, if required, to

pay his debts.

a [Explained & modified by 1794, c. 415.]

Legacies, &c. how to be recovered.

See 1762, c. 69—1777, c. 115, s. 56.

Be it further enacted, That then and in such case, the executor or administrator shall, and they are hereby empowered and required, to expose to sale, (*a*) in like manner as aforesaid, by the directions of the precinct court, such part of, and so many of the unperishable goods, directed by the before-mentioned act to be kept and reserved in kind, as will pay and satisfy all such debts and demands.

4. And whereas some doubts have arisen concerning the manner of recovery of legacies, filial portions, and other parts of deceased persons' estates; *Be it further enacted*, That it shall and may be lawful to recover the same by petition, according to the respective sums sued for, in the general or precinct courts of this province, as well as in any ecclesiastical or other court whatsoever.

CHAP. 16.

See act, Nov. 1768, c. 86.

An Act to restrain the keeping too great a number of horses and mares, and for amending the breed.

No person not having a freehold of 50 acres, &c. to keep a stallion or mare, or more than 1 gelding or spayed mare, running at large.

1. *Be it enacted by his excellency the palatine, and the rest of the true and absolute lords proprietors of Carolina, by and with the advice and consent of the rest of the members of the general assembly, now met at Edenton, for the north-east part of the said province, and it is hereby enacted by the authority of the same*, That no person, being an inhabitant of this government, and not having a freehold of fifty acres of land, or possessed of, or occupying lands or tenements, shall keep, as owner, a stone-horse or horses, or unspayed mare or mares, or any more than one gelding, or spayed mare, to run at large.

Persons keeping stallions, &c. contrary to this act, what to forfeit.

2. *And be it further enacted by the authority aforesaid*. That if any person, not qualified as aforesaid, shall keep any horse or mare running at large, except one gelding, and one spayed mare, as aforesaid, it shall and may be lawful for any person to take up the same, who is hereby obliged and directed to give notice thereof, in writing, to the owner, within three days after such taking up; which owner shall have liberty to appear at the next succeeding court of the county wherein he dwelleth, and if he can prove to the satisfaction of the said court, that he is qualified according to the meaning of this act, to keep such horse or mare so taken up, he shall have the same restored; but if he shall fail in his proof aforesaid, he shall pay to the person taking up, twenty shillings for every horse

or mare so taken up: and if the owner of such horse or mare shall refuse to pay the aforesaid sum of twenty shillings, that then it shall and may be lawful for the taker up of such horse or mare to sell the same, at public vendue, to the highest bidder; and one half of the money arising by such sale to take to himself, and the other half he shall deliver to the owner of such horse or mare.

3. *And be it further enacted by the authority aforesaid,* That where the information of the taking up of such horses or unspayed mares as aforesaid, shall happen to be made to the owner or owners within less than ten days before the time of the sitting of the court of the precinct where such owner resides, in such case he shall have liberty to appear at the next succeeding court after such court, to prove himself a freeholder, or possessed of, or occupying lands or tenements.

If notice be given in less than 10 days before the court, owner may appear at next succeeding court.

4. *And be it further enacted by the authority aforesaid,* That no person or persons whatsoever, inhabitants of this government, shall suffer or let go at large, any stone-horse or stone-horses of two years old, unless such horse or horses shall be, at least, thirteen hands in height, (a) upon penalty of forfeiting such horse or horses, or the sum of three pounds, to the taker up of every such stone-horse; provided the same be found running at large, and not within the confine of any fence, water, marsh or swamp.

No person to let stallions less than 13 hands high, go at large.

a [No stallion to go at large, 1801, c. 594.]

SIGNED BY

WILLIAM REED, *Esq. President.*

T. POLLOCK,

M. MOORE,

CHR. GALE,

JOHN LOVICK,

Lords Proprietors' Deputies.

EDWARD MOSELY, *Speaker.*

ANNO REGNI GEORGII II.

Sir Richard E-
verard, Bart.
Governor.

At a General Assembly, held at Edenton, in Chowan precinct, the twenty-seventh day of November, in the year of our lord one thousand seven hundred and twenty-nine.

CHAP. 17.

An Act to make Hyde precinct separate from Beaufort precinct, with power of erecting a Court-house, and holding courts.

1. WHEREAS the precinct of Hyde being united to Beaufort precinct, is found very inconvenient for the inhabitants of Hyde precinct to travel to Bath town, where the courts are now held :

Hyde precinct
erected.

2. *Be it therefore enacted by his excellency the palatine, and the rest of the true and absolute lords proprietors of Carolina, by and with the advice and consent of the rest of the members of this General Biennial Assembly, now met at Edenton, for the north-east part of the said province, and it is hereby enacted by the authority of the same, That, for the future, Hyde precinct shall be separate, in all respects, from Beaufort precinct, with power of having a court and court-house erected in the said precinct, and other powers and privileges to a precinct belonging ; and that the justices to be appointed for the said precinct, shall be, and are hereby invested with full power to purchase ground for erecting the said court-house, in the same manner as by law in such cases is already provided ; and to the end, that the same may be built in the most convenient place for the inhabitants of the said precinct, the justices thereof are hereby directed to cause the said court-house to be erected at or near William Webster's plantation ; and also, to cause a poll-tax, not exceeding ten shillings per poll, to be levied, in such manner as by law is already provided in such cases, for defraying the charges of buying the said land, and building a court-house.*

CHAP. 18.

An Act to appoint that part of Albemarle county, lying on the south side of Albemarle sound, and Morattuck river, as high as the Rain-Bow banks, to be a precinct, by the name of Tyrrell precinct.

1. WHEREAS that part of Albemarle county, lying on the south side of Albemarle sound, and Morattuck ri-

ver, as high as the Rain-Bow banks, includes part of the several precincts hereafter named, viz. *Chowan, Pasquotank, Bertie, and Currituck*; and whereas the great width of the said sound, and also the great distance from the several precinct courts, renders it almost impracticable for the inhabitants of those parts to attend their courts as aforesaid :

2. *Wherefore be it enacted by his excellency the palatine, and the rest of the true and absolute lords proprietors of the province of Carolina, by and with the advice and consent of the rest of the members of this present General Assembly, now met at Edenton, for the north-east part of the said province, and by the authority of the same, That that part of Albemarle county, lying on the south side of Albemarle sound, and Morattuck river, being part of the several precincts before mentioned, bounded to the westward by Thomas Hoskin's upper line, beginning at his upper corner tree, on Rain-Bow banks, on Morattuck river, and by a line running south from his outer corner tree, to the southward by the bounds of Albemarle county, to the eastward by the sound, between Roanoak island, and Croatan, and to the northward by Albemarle sound, and Morattuck river, as high as the Rain-Bow banks, in Morattuck river, shall be, and the same is hereby declared to be erected into a precinct, by the name of Tyrrell precinct, in Albemarle county, with all and every the rights, privileges, and other benefits and advantages whatsoever, which any other precinct in Albemarle county can or may have, use, or enjoy.*

Tyrrel precinct erected.

CHAP. 19.

An additional Act to an act for appointing Toll-Books, and for preventing people from driving horses, cattle, or hogs, to other persons' lands.

1715, c. 8.

1. WHEREAS in and by the said act, the remedy appointed for recovering the penalty of twenty pounds for the inhabitants of any other government's cattle, horses, or hogs, running on peoples' land in this government, is by distress to be made by the toll-keeper or ranger, but no method appointed for disposing such distress or proceedings thereon :

Proceedings to
be had on de-
strained stock.

[See 1715, c. 8
—1722, c. 11.]

2. *Be it therefore enacted by his excellency the palatine, and the rest of the true and absolute lords proprietors of Carolina, by and with the advice and consent of the rest of the members of this General Assembly, now met at Edenton, for the north-east part of the said province, and it is hereby enacted by the authority of the same, That when such distress is made, or which may hereafter be made, by the owner of the land, as well as the officers aforesaid, the stock so distrained shall be kept four days, unless sooner redeemed or replevied by the owner, who, on paying the penalty, and the reasonable charges, shall have them at any time within four days after seizure; otherwise, after the expiration of the said four days, they shall be appraised by three indifferent freeholders, to be appointed and sworn by some magistrate, and the property shall be immediately vested in the person or persons seizing the same, he or they returning the said appraisement to the clerk of the precinct court, with an exact account of the marks or brands of such horses, cattle, or hogs, which shall be set up at the court-house the next court; and any person proving the right to such cattle, horses, or hogs, at any of the four next courts in the said precincts, after such return of that appraisement, having given the distrainer notice, shall have an order or judgment of the said court for the overplus, according to the appraisement, the penalty and charges deducted.*

Penalty how to
be recovered.
Guardian, &c.
not to be exclu-
ded, &c.

3. *And be it further enacted by the authority aforesaid, That the penalty of ten pounds in the said act for appointing toll-books, may be recovered by distress in like manner, provided that no guardian or executor shall be excluded by the said act from bringing any stock, under their care, on their land.*

Foreigners'
stock found on
lands in this
province, deem-
ed to be driven
thither, unless
otherwise prov-
ed.

4. *And be it further enacted by the authority aforesaid, That the stock of any inhabitant of another government being found on people's land in this government, contrary to the said act, shall be deemed to be driven thither by the owners, unless it can be proved they strayed by some unavoidable accident, and were pursued, and have not ranged above four days, provided such distress be made four miles to the southward of the line betwixt this government, and Virginia.*

No person shall
drive, hunt or
kill any stock,

5. *And be it further enacted by the authority aforesaid, That no person within this government, shall presume to hunt, drive, or kill any stock, deer, or game, on any*

person's land within this government, except neighbours whose lands are very near adjacent, without leave first had and obtained from the owner of the said land whereon he or they shall be found ranging or hunting, contrary to this act, under the penalty of five pounds for each and every time he or they shall be found ranging; the one half to the owner of the land, the other half to the informer: to be recovered by a warrant from two justices, whereof one to be of the quorum; which said justices are hereby impowered finally to hear and determine the same.

6. And be it further enacted by the authority aforesaid, That no ranger or other person, on any pretence, shall range or hunt, kill or take up, any unmarked cattle, horses, or hogs, on other person's lands, without leave of the owner of such land or lands; any law, usage, or custom, to the contrary, notwithstanding: But that every person shall have free liberty to take up and kill all such unmarked cattle, hogs, and horses, as he shall find running on his own land, and the same to convert to his own use, unless the property thereof be proved within three months, by any person claiming the same; who, paying for the taking up, shall have the said beast, or its value, as it is in the law directed for rangers.

7. And whereas great damages are frequently done by slaves being permitted to hunt or range with dogs or guns: for prevention whereof, *Be it enacted by the authority aforesaid*, That it shall not be lawful for any slave, on any pretence whatsoever, to go, range, or hunt on any person's land other than his master's, with dog or gun, (a) or any weapon, unless there be a white man in his company; under the penalty of twenty shillings, to be paid by his master, for every offence, unto the owner of the land whereon such slave shall range or hunt; and that no slave shall travel from his master's land by himself to any other place, unless he shall keep the most usual and accustomed road: and if any slave shall offend contrary hereto, it shall be lawful for the owner of the land whereon any slave shall be found, to give him a severe whipping, not exceeding forty lashes: And if any loose, dis-

deer or game, on others' lands, without leave, &c. on penalty of 5*l*. one half to the owner, and the other to the informer.

No ranger shall take up any unmarked cattle, &c. without leave from the owner of the land; but such owner may convert them to his own use, unless the property be proved in three months.

No slave to hunt on any land but his master's, except in company with a white man; nor travel from his master's land without keeping the main road; on penalty of being whipped.

If any disorderly person be found in company with slaves, &c. and cannot give a

a [Not to carry a gun on his master's land, without a certificate from the chairman of the county court, 1741, c. 35—for which the master must enter into bond and security, 1753, c. 5, s. 2; nor shall a slave carry a gun on a plantation where crop is not tended, s. 3.—A certificate must also be obtained for a slave to hunt with dogs, s. 8.]

good account of himself, he shall be whipped.

Negroes travelling in the night, or found in kitchens, to be whipped.

Proviso.

See subsequent acts concerning servants and slaves.

orderly, or suspected person, be found drinking, eating, or keeping company with slaves in the night time, such person shall be apprehended and carried before a justice of the peace.

8. And for the better suppressing of negroes' travelling and associating themselves together in great numbers, to the terror and damage of the white people: *Be it enacted, by the authority aforesaid, That if any negro or negroes shall presume to travel in the night, or be found in the quarters or kitchens among other persons' negroes, such negroes so found shall receive correction, not exceeding forty lashes, as aforesaid; and such negroes in whose company they shall be found, shall receive correction, not exceeding twenty lashes.*

9. *Provided always, That nothing in this act shall be construed to prevent any person from sending his slaves on his lawful business, with a pass, in writing; nor to hinder neighbours' negroes intermarrying together, so that license being first had and obtained of their several masters.*

ANNO REGNI GEORGH II.

Gabriel Johnston, Esq. Governor.

At a General Assembly, held at Edenton, in Chowan precinct, in the year of our lord one thousand seven hundred and thirty-four.

CHAP. 20.

An Act to confirm and establish the precincts of Onslow and Bladen, and for appointing them distinct parishes.

1. WHEREAS by an act, entitled, An Act for regulating vestries in this government, and for the better inspecting vestrymen and churchwarden's accompts of each and every parish in this government. it is enacted. that the southern part of this province shall be erected into a precinct, by the name of New-Hanover precinct. and bounded to the northward by the Haul-over and Little-Inlet, and to the southward by the southernmost bounds of the province; and as the precinct of New-Hanover is now become very populous, and the extent thereof being found too incommodious to many of the inhabitants thereof, particularly those of New-River, and the upper part of the Northwest river:

2. We therefore pray that it may be enacted, *And be it enacted by his excellency GABRIEL JOHNSTON, Esquire, Governor, by and with the advice and consent of his majesty's council, and General Assembly of this province, and it is hereby enacted by the authority of the same, That a precinct be erected at New-River, by the name of Onslow precinct; and that the said precinct be bounded to the northward by Whiteoak river, from the mouth to the head thereof; and to the southward, by a creek that comes out of the sound, and comes across New-River road, called the Bay-Swamp, or Beasley's creek.*

Onslow precinct erected.

3. *And be it further enacted by the authority aforesaid, That the upper part of the northwest river be erected into a precinct, by the name of Bladen precinct; and that the said precinct be bounded to the southward as follows, viz. beginning at the mouth of Livingston's creek, and bounded by the said creek to the head thereof; and then, by a west line, to the bounds of the government; and that the said precinct be bounded to the northward by Black-River, as follows, viz. beginning at the mouth of the said river, and bounded by the main river up to the fork, and that then the westernmost branch be the bounds to the head thereof.*

Bladen precinct erected.

SIGNED BY

GABRIEL JOHNSTON, *Esq. Governor.*

WILLIAM SMITH, *President.*

WILLIAM DOWNING, *Speaker.*

ANNO REGNI GEORGH II.

At a General Assembly, held at Newbern, the sixth day of March, in the year of our Lord one thousand seven hundred and thirty-eight.

CHAP. 21.

An Act for abolishing the office of Provost-Marshall of this province; and for altering the names of the precincts into counties.

1. *And be it further enacted by the authority aforesaid, That from and after the twenty-fifth day of March, in the year of our lord one thousand seven hundred and thirty-nine, the office of Provost-Marshall in this province shall be abolished, and totally cease and determine, as if such office had never been: and that from and after the*

Gabriel Johnston, Esq. Governor.

All the parts of this act concerning the manner of appointment, continuance in office, and duty of sheriffs, repealed by subsequent acts.

Office of provost marshal abolished.

Precincts altered to counties. ratification of this act, the several precincts within this province shall be called counties.

CHAP. 22.

An Act to prevent killing Deer at unseasonable times.

[Sec 1745, c. 33
—1768, c. 88.]

No deer to be killed between Feb. 15. and July 15, on penalty of 5l.

a [20th Feb. & 15th Aug. by 1784, c. 212, s. 4.]

Servant or slave killing deer by master's command, master liable to the penalty.

Servant or slave killing deer, to have 30 lashes, unless security is given for the fine.

1. *Be it enacted by his excellency GABRIEL JOHNSTON, Esquire, Governor, by and with the advice and consent of his majesty's council, and General Assembly of this province, and it is hereby enacted by the authority of the same.* That it shall not be lawful to kill or destroy any deer, running wild in the woods, or unfenced ground, in this government, by gun, or any other ways or means whatsoever, between the fifteenth (a) day of February, in each year, and the fifteenth day of July succeeding, after the ratification of this act: and if any person not being a servant or slave, shall kill any deer contrary to this act, and be thereof lawfully convicted, the said person, for every deer so killed or destroyed, shall forfeit and pay the sum of five pounds, current money.

2. *And be it further enacted by the authority aforesaid,* That if any servant or slave, by order or command of his or her master, mistress, or overseer, shall kill or destroy any deer contrary to this act, the master, mistress, or overseer giving such order or command, and being thereof lawfully convicted, for every deer so killed or destroyed, as aforesaid, shall forfeit and pay the aforesaid penalty of five pounds, as if the said master, mistress, or overseer had actually committed the offence.

3. *And be it further enacted by the authority aforesaid,* That if any servant or slave, of his own accord, without any order or command from his or her master, mistress, or overseer, shall kill, destroy, or buy any deer, contrary to this act, and be thereof convicted, by the oath of one credible witness, before a justice of the peace of the county wherein the offence is committed, for every deer so killed or destroyed as aforesaid, the said servant or slave shall have and receive, on his or her bare back, thirty lashes, well laid on, to be inflicted by order of the said justice before whom the said conviction shall be, unless some sufficient person will become bound to pay, for the said servant or slave, the sum of five pounds current money, within six months, in lieu of the said punishment

aforesaid, to the churchwardens of the parish where the offence is committed, for the uses directed by this act.

4. *And be it further enacted by the authority aforesaid,* That one moiety of the forfeitures of this act, shall be to the churchwardens of the parish (a) where such offence is committed, for the use of the parish, and the other moiety to the informer; to be recovered with costs, by a warrant from any justice of the peace within this government; saving unto all free people, the right of appeal to the county court where the offence is committed: which said court is finally to determine the same; wherein no essoin, protection, or wager of law, shall be allowed or admitted of.

Fines appropriated.

a [County 1777, c. 115, s. 83.]

Right of appeal allowed.

SIGNED BY

GABRIEL JOHNSTON, *Esq. Governor.*

WILLIAM SMITH, *President.*

WILLIAM DOWNING, *Speaker.*

ANNO REGNI GEORGH II.

DECIMO QUINTO.

At a General Assembly, held at Edenton, the fourth day of April, in the year of our lord one thousand seven hundred and forty-one.

GABRIEL JOHNSTON, *Esq. Governor.*

CHAP. 23.

An Act concerning marriages.

1. For preventing clandestine and unlawful marriages, we pray that it may be enacted, *And be it enacted by his excellency GABRIEL JOHNSTON, Esq. Governor, by and with the advice and consent of his majesty's council, and the General Assembly of this province, and it is hereby enacted by the authority of the same,* That no minister or ministers, justice or justices of the peace, within any of the parishes of this government, shall celebrate the rites of matrimony between any persons, or join them together as man and wife, without license first had and obtained for that purpose, according to the directions of this act, or thrice publication of the banns, as prescribed by the rubrick in the book of common-prayer: and if any minister or ministers, justice or justices of the peace, shall, contrary to the true intent and meaning of this act, celebrate the rites of matrimony between any persons, or otherwise join them in marriage, he or she so offending, shall forfeit and pay the sum of fifty pounds, proclamation money; to be recovered and applied as herein after

No minister or justice to marry without license, or publication of banns, on penalty of 50l.

[Modified by 1778, c. 134.]

Minister going out of the government, and marrying persons of this government without license, or banns published, to incur the same penalty.

is directed : and if any minister shall go out of this government, and there, contrary to the true intent and meaning of this act, join together in matrimony any person or persons belonging to this government, without such license or publication of banns, as is herein prescribed, every minister so offending, shall incur the same penalties and forfeitures, as if the same had been done in this government.

If they grant a false certificate, to suffer as in case of forgery.

2. *And be it further enacted by the authority aforesaid,* That if any minister, clerk, or reader, shall grant a false certificate, he or they so offending, shall be liable to such punishment as in case of forgery at common law ; and all such offences shall be prosecuted, tried, and determined, in the general court of this province.

Minister or reader wittingly publishing banns between servants without master's leave, to forfeit 5l.

3. *And be it further enacted by the authority aforesaid,* That if any minister or reader shall wittingly publish, or cause or suffer to be published, the banns of matrimony between any servants, or between a free person and a servant ; or if any minister or justice of the peace shall wittingly celebrate the rites of matrimony between any such, without a certificate from the master or mistress of every such servant, that it is done by their consent ; he shall forfeit and pay five pounds, proclamation money, to the use of the master or owner of such servant ; to be recovered by action of debt, bill, plaint, or information :—

Servant marrying without leave to serve one year.

And every servant so married, without the consent of his or her master or mistress, shall, for his or her said offence, serve his or her said master or mistress, their executors, administrators, or assigns, one whole year, after the time of service by indenture or custom is expired.

White persons intermarrying with negroes, &c. to forfeit 50l.

4. And for prevention of that abominable mixture and spurious issue, which hereafter may increase in this government, by white men and women intermarrying with Indians, negroes, mustees, or mulattoes ; *Be it enacted by the authority aforesaid,* That if any white man or woman, being free, shall intermarry with an Indian, negro, mustee, or mulatto man or woman, or any person of mixt blood, to the third generation, bond or free, he shall, by judgment of the county court, forfeit and pay the sum of fifty pounds, proclamation money, to the use of the parish. (a)

a [County, 1777, c. 115, s. 8.]

Minister or justice knowingly marrying white persons to negroes, &c. to forfeit 50l.

5. *And be it further enacted by the authority aforesaid,* That no minister of the church of England, or other minister, or justice of the peace, or other person whatsoever within this government, shall hereafter presume to marry

a white man with an Indian, negro, mustee, or mulatto woman, or any person of mixt blood, as aforesaid, knowing them to be so, upon pain of forfeiting and paying, for every such offence, the sum of fifty pounds, proclamation money ; to be applied as aforesaid.

6. *And be it further enacted by the authority aforesaid,* That the several fines and forfeitures in this act, which exceed the sum of twenty-six pounds thirteen shillings and four pence, proclamation money, shall be heard, tried, and determined, in the general court of this province ; and all under the aforesaid sums shall be heard, tried and determined, in the court of the county where the offence shall be committed.

All fines exceeding 26l. 13s. 4d. to be tried in the General Court. All under in the county court. [See 1803, c. 627.]

7. *And be it further enacted by the authority aforesaid,* That all and every act and acts, and every clause and article thereof, heretofore made, so far as relates to any matter or thing whatsoever within the purview of this act, is and are hereby repealed and made void, to all intents and purposes, as if the same had never been made.

Repealing clause.

CHAP. 24.

An Act to appoint Constables.

1. To the end that constables may be regularly appointed, throughout this government :

2. We pray that it may be enacted, *And be it enacted by his excellency GABRIEL JOHNSTON, Esquire, Governor, by and with the advice and consent of his majesty's council, and the General Assembly of this province, and it is hereby enacted by the authority of the same,* That the courts (a) of the several counties which now are, or hereafter shall be within this government, shall, at the court to be holden for each respective county in this government, next after the first day of January, yearly, and every year, nominate and appoint as many persons of their said county as they shall judge necessary, to be constables within the same, for the then ensuing year ; (b) which constables so appointed, shall have the following oath administered to them ; *that is to say,*

County courts yearly to appoint constables.

a [Seven justices must be present, and a majority of them must appoint, 1816, c. 901, s. 2.]

You shall swear, that you will well and truly serve the state of North-Carolina, in the office of a constable ; you shall see and cause the peace of the state to be well and duly preserved and kept, according to your power ;

Constables' oath, as modified by subsequent acts.

b [To act after the expiration of his term, is a misdemeanor—1818, c. 980, s. 3.]

you shall arrest all such persons as in your sight shall ride or go armed offensively, or shall commit or make any riot, affray, or other breach of the peace; you shall do your best endeavour, upon complaint to you made, to apprehend all felons and rioters, or persons riotously assembled; and if any such offenders shall make resistance, with force, you shall make hue and cry, and shall pursue them according to law; you shall faithfully, and without delay, execute and return all lawful precepts to you directed; you shall well and duly, according to your knowledge, power, and ability, do and execute all other things belonging to the office of a constable, so long as you shall continue in this office. *So help you God.*(a)

a [Additional oaths to be taken, 1791, c. 342.]

Constables' power.

3. *And be it further enacted by the authority aforesaid,* That each and every constable, so appointed, nominated, and sworn, is, and they are hereby invested with, and may execute the same power and authority, to all intents and purposes, as the constables within the kingdom of England are by law invested with and execute.

Constable neglecting to qualify in ten days after notice, to forfeit 50s.

4. *And be it further enacted by the authority aforesaid,* That if any person or persons, nominated and appointed constable (b) by the court of any of the counties within this government, shall neglect or refuse to qualify himself, according to the directions of this act, within ten days after notice of his nomination and appointment as aforesaid, without he can shew sufficient cause for his neglect, to be admitted of by the justices, who shall or may grant their warrant to recover the penalties in this act mentioned, he shall forfeit the sum of fifty shillings, proclamation money; to be recovered by a warrant from two justices of the peace in the county where such person was appointed constable, and applied to the use of the county where such constable is appointed; provided such notice be in writing, signed by the clerk of the court, and served by the sheriff of the county, or preceding constable, on such constable or constables as shall be appointed according to the directions of this act.

Persons exempt from serving as constable.

5. *Provided always,* That no person in commission of any office, civil or military, or member of assembly, for

b [To give bond and security in the sum of 250l. for the faithful discharge of duty, 1786, c. 253, s. 8.—In the sum of 500l. 1804, c. 650, s. 2.—In the sum of £2000 for the faithful discharge of duty and collecting and paying over monies, 1818. c. 980, s. 1.]

the time being, nor any one who has served in any such station, nor any other who has served as constable, within the space of five years before, nor any person who is exempt, by the laws of England, shall be obliged to serve in the office of constable; any law, usage, or custom, to the contrary, notwithstanding.

6. *And be it further enacted*, That any one justice of the peace of the county, shall, and he is hereby empowered, to administer to the several constables hereafter to be appointed in his county, the oath directed by this act for their qualification.

Justice to administer the oath.

7. *And be it further enacted by the authority aforesaid*, That upon the death or removal of any constable out of the district for which he was appointed constable, it shall and may be lawful for the justices of the county court, in which such district shall be, or any one of them, to appoint and swear another person, to be constable in the room and stead of the constable dead or removing out of his district as aforesaid, who shall act until the next county court; the justices of which court shall then either continue the person appointed as aforesaid, or nominate and appoint a new one.

On death or removal of constables, justices to appoint others, till the next court; when they may continue them, or appoint others.

8. *And be it further enacted by the authority aforesaid*, That if any constable (*a*) to whom any precept is directed, by any justice of the peace, shall refuse or neglect to serve such precept, he shall, for every such offence, on complaint of the party prosecuting, be fined, at the discretion of the court of which such justice is a member; to be paid to the complainant.

Constable refusing to serve precepts, to be fined, at the discretion of the court.

9. And for the better executing any precept or mandate, in extraordinary cases; *Be it enacted by the authority aforesaid*, That it shall and may be lawful, to and for any justice of the peace within this government, to direct any such precept or mandate, in the absence of or for want of a constable, to any person, not being a party, who shall be obliged to execute, or endeavour in the best manner he can, to execute the same, under the like penalty any constable shall be liable to, by virtue of this act; to be recovered and applied as aforesaid.

For want of a constable, precept may be directed to any other person, not being a party.

10. *And be it enacted by the authority aforesaid*, That every constable within this province, appointed and qualified, as herein before directed, shall be, and is hereby exempted from working on the roads, for and during

Constables exempted from working on the roads.

a [May serve process upon any bay, river or creek adjoining their counties, in the same manner as sheriffs. 1790, c. 330.]

the year he shall be constable ; any law, usage, or custom, to the contrary, notwithstanding.

Repealing
clause.

5. *And be it further enacted by the authority aforesaid,* That all and every other act and acts, and every clause and article of the same, heretofore made, so far as relates to the appointing of constables, is and are hereby repealed and made void, to all intents and purposes, as if the same had never been made.

CHAP. 25.

An act to confirm and erect that part of the province of North-Carolina called Edgcomb county, into a county, by the name of Edgcomb county, and for establishing the said county a parish ; and for ascertaining the boundary line between the north-west and society parishes, in Bertie county.

Edgcomb esta-
blished.

Its bounds.

Commissioners
to lay out the
said bounds.

1. WE pray that it may be enacted, *And be it enacted by his Excellency Gabriel Johnston, esq. Governor, by and with the advice and consent of his Majesty's council, and general assembly of this province, and it is hereby enacted by the authority of the same,* That that part of this province now called Edgcomb county, be, and is hereby established a county, by the name of Edgcomb county, the bounds whereof shall be as follows : Beginning on Roanoak river, at Jenkin Henry's upper corner tree, from thence, a strait course to the mouth of Cheek's mill creek, on Tar river ; and from the south side of the said river, opposite to the said creek, a strait line unto the middle grounds, between Tar and Neus rivers ; which shall be the dividing line between Beaufort, and Edgcomb, and Craven counties ; and from thence, up as high as may be, keeping the middle between the said two rivers, which shall be the dividing line between the counties of Craven, and Edgcomb, and Beaufort : and the county courts of Craven and Edgcomb, are hereby impowered, each of them, for their respective counties, to appoint two commissioners to run out the bounds or dividing line between Craven and Edgcomb ; which line so run out as abovesaid, and marked, shall be the dividing line between the said counties.

CHAP. 26.

An Act to prevent stealing of cattle and hogs, and altering and defacing marks and brands, and mismarking and misbranding horses, cattle and hogs, unmarked and unbranded.

1. WHEREAS many wicked men in this province, being too lazy to get their living by honest labour, make it their business to ride in the woods and steal cattle and hogs, and alter and deface the marks and brands of others, and mismark and misbrand horses, cattle, and hogs, not marked or branded : And whereas the laws in force in this province are, by experience, found not to be sufficient to remedy those evils :

2. We pray that it may be enacted, *And be it enacted by his excellency Gabriel Johnston, esq. Governor, by and with the advice and consent of his Majesty's council, and general assembly of this province, and it is hereby enacted by the authority of the same,* That if any free person or persons shall steal any neat cattle or hog, or shall alter or deface the mark or brand of any other person or persons' horse, neat cattle, or hog, such person or persons, being thereof lawfully convicted, shall, for every neat cattle or hog he or they shall steal, or for every horse, mare, colt, neat cattle, or hog, whose mark or brand he or they shall alter or deface, over and above the value of such neat cattle or hog so stole ; or for every horse, mare, colt, neat cattle, or hog, whose mark or brand he or they shall alter or deface ; forfeit and pay the sum of ten pounds, proclamation money ; to be recovered by action of debt, in any court of record within this province, (wherein no essoin, injunction, protection, or wager of law, shall be allowed or admitted of,) by the owner of such horse, mare, colt, neat cattle, or hog, that shall be so stolen, or the mark or marks, brand or brands, so altered or defaced, provided he prosecute for the same within six months after discovery of the fact committed ; and after that time, any person may, as well as the owner, sue for and recover the same, provided such prosecution is commenced within one year after discovery of the fact committed ; and the offender shall, over and above the said fine, receive forty lashes on his bare back, well laid on ; and for the second offence, shall pay the fine abovementioned, and stand in the pillory two hours, and be branded in the left hand, with a red hot iron, with the letter T : And if any person or persons shall mismark or brand any unbranded or unmarked

Persons stealing cattle, &c. or altering marks of cattle, &c. what penalties liable to.

horse, mare, or colt, neat cattle, or hog, not properly his or their own, he or they shall forfeit and pay the sum of ten pounds, proclamation money, over and above the value thereof, for every such horse, mare, colt, neat cattle, or hog, so mismarked or misbranded ; to be recovered as aforesaid.

Persons seeing the crimes committed, and not discovering it in ten days, to forfeit 5l.

a [Before a justice of the peace, 1803, c. 627, s. 1.]

Evidence sufficient, if he told any person he saw the crimes committed.

3. And to prevent the concealing such offences, *Be it enacted by the authority aforesaid*, That if any person or persons shall see any other person or persons committing any of the crimes aforesaid, and shall not discover the same, in ten days, to some magistrate, then, and in such case, such person or persons, for not discovering the said crime, shall forfeit the sum of five pounds, proclamation money, for every time he shall see the said crime or crimes, or any of them, committed ; to be recovered by any person or persons who will sue for the same, by action of debt, in any court of record (*a*) in this province ; wherein no essoin, protection, injunction, or wager of law, shall be allowed or admitted of.

4. And because it is difficult to convict any person who has seen such crimes committed, if he will deny the same ; *Be it further enacted by the authority aforesaid*, That it shall be sufficient evidence to convict any person who has seen any of the aforesaid crimes committed, if it be proved that he has told any other person that he did see the said crimes, or any of them, committed.

5. And whereas, by common custom in this province of killing of cattle and hogs in the woods, great opportunities are given to steal the cattle and hogs of other people ; *Be it therefore enacted by the authority aforesaid*, That if any person hereafter shall kill any one or more neat cattle or hogs in the woods, he shall, within two days, shew the head and ears of such hog or hogs, and the hide, with the ears on, of such neat beast or cattle, to the next magistrate, or to two substantial freeholders, under penalty of five pounds, proclamation money ; to be recovered, by any person who will sue for the same, by action of debt, bill, plaint, or information, in any court of record (*b*) in this province ; wherein no essoin, protection, injunction, or wager of law, shall be allowed.

Persons killing cattle or hogs in the woods, to shew ears and hide in two days to a magistrate, or two freeholders, on a penalty of 5l.

b [Before a justice of the peace, 1803, c. 627, s. 1.]

Persons having cattle, &c. to have a mark and brand recorded.

6. *And be it further enacted by the authority aforesaid*, That every person in this province, who hath any horses, cattle, or hogs, shall have an ear mark and brand, different from the ear mark and brand of all other persons ; which ear mark and brand he shall record, with the clerk

of the county where his horses, cattle, or hogs are, if not already recorded; and that he shall brand all horses with the said brand, from 18 months old, and upwards, and ear-mark all his hogs, from six months old, and upwards, with the said ear mark; and ear-mark or brand all his cattle, from twelve months old, and upwards, with the said ear-mark or brand: And if any dispute shall arise about any ear-mark or brand, the same shall be decided by the book of the clerk of the county court where such cattle, horses, or hogs are.

Cattle, horses and hogs, when to be marked and branded.

7. *And be it further enacted by the authority aforesaid,* That when any person shall buy any neat cattle from another, or come to the same by gift, will, or any other lawful means, that then, and in such case, the person who has gained the same by any of the ways aforesaid, shall, within eight months, brand the aforesaid neat cattle with his own proper brand, in the presence of two credible witnesses, a certificate of which shall be signed by the said witnesses.

Persons getting cattle by will, &c. to brand the same with his own mark.

8. *And be it further enacted by the authority aforesaid,* That this act shall be publicly read, by the clerk of every county court in this province, at least, twice every year, viz. at the first court after Easter, and the first court after August, in the morning, on the second day of the court, in open court, under penalty of twenty shillings, proclamation money; to be recovered by any person, by a warrant, under the hands and seals of any two justices of the peace of the county, to the use of the informer.

This act to be read in court twice a year.

9. *And be it further enacted by the authority aforesaid,* That if any strange cattle shall go into the cowpen of any person in this province, the owner of that cowpen, if he resides there, or the overseer or manager, where the owner does not reside, shall be obliged to give public notice thereof, by affixing a note of the flesh-marks, and ear-mark, and brand, of all such strange cattle as shall be at his pen, at the church doors of the parish where the said cowpen is, or where there is no church, at the court-house door, in one month after such cattle shall come to his pen, under the penalty of twelve shillings, proclamation money, for every beast that he shall neglect to give such notice of; to be recovered in the same manner, and to the same use, as the fine last mentioned.

Strange cattle going to any cowpen, owner to give notice thereof, on penalty of 12s.

10. *And be it further enacted by the authority aforesaid,* That if any negro, Indian, or mulatto slave, shall kill any horse, cattle, or hog, belonging to any person whatsoever, without the consent of the owner or owners thereof,

Slaves stealing or mis-marking any cattle, &c. what penalties liable to,

a [Entitled to a trial by jury.

1793, c. 381, s. 1.]

b [The superior courts have exclusive jurisdiction, 1816, c. 912, s. 1.]

Repealing clause.

or shall steal, misbrand or mismark any horse, cattle, or hog, such slave or slaves shall, for the first offence, suffer both his ears to be cut off, and be publicly whipt, at the discretion of the justices and freeholders (*a*) before whom he or she shall be tried; and for the second offence, shall suffer death: (*b*) and the trial and conviction of the said slave or slaves, shall be in such manner as is prescribed by an act of assembly, entitled, *An Act concerning servants and slaves*.

11. *And be it further enacted by the authority aforesaid.* That all and every other act and acts, and every clause and article thereof, heretofore made, so far as relates to the preventing the stealing of horses, cattle, and hogs, and altering and defacing the marks and brands, and mis-marking and misbranding the same, or to any other matter or thing whatsoever, within the purview of this act, is and are hereby repealed and made void, to all intents and purposes, as if the same had never been made.

CHAP. 27.

See 1748, c. 42. An Act for ascertaining the boundary line between Tyrrell and Beaufort counties, and between Edgcomb county, and Tyrrell and Beaufort counties.

Boundaries between Edgcomb, Tyrrell and Beaufort.

1. We pray that it may be enacted, *And be it enacted by his excellency GABRIEL JOHNSTON, Esq. Governor, by and with the advice and consent of his majesty's council, and the General Assembly of this province, and it is hereby enacted by the authority of the same,* That each of the county courts of Tyrrell, Edgcomb, and Beaufort, shall appoint one person, who shall settle and run the boundary line between Tyrrell and Edgcomb counties, and between part of Edgcomb and Beaufort counties, in manner following; *that is to say,* the said commissioners shall begin at the upper corner tree of Jenkin Henry's line, on the south side of Roanoak river, and from thence, run a direct line to the mouth of Cheek's mill creek, on Tar river; and the said commissioners, as soon as the said line is finished, shall, under their hands, return the courses thereof into each of the courts of the aforesaid counties, which shall be recorded by the clerks of the said several courts: and the said line so run, shall, forever after, be deemed the boundary line between Tyrrell and Edgcomb counties, and between Edgcomb and Beaufort counties, from Tyrrell county as far as Tar river.

2. *And be it further enacted by the authority aforesaid,* Between Tyrrel
and Beaufort.
That the flat swamp which, heretofore, was the boundary of Albemarle and Bath counties, shall, to the head of the said swamp, and from the head thereof, by a direct line to the aforesaid line between Tyrrell and Edgcomb counties, for ever, be the boundary line between Tyrrell and Beaufort counties.

CHAP. 28.

An Act for restraining the taking of excessive usury.

1. FORASMUCH as the settling of interest at a reasonable rate, will greatly tend to the advancement of trade, and improvement of lands, by good husbandry, with many other considerable advantages to this province: and whereas divers persons of late, have taken great and excessive sums for the loan of money, goods, and merchandizes, to the great discouragement of industry, in the husbandry, trade, and commerce of this province:

2. We pray that it may be enacted, *And be it enacted,* No person to
take more than
6 per cent. for
interest.
by his excellency GABRIEL JOHNSTON, Esq. Governor, by and with the advice and consent of his majesty's council, and General Assembly of this province, and it is hereby enacted by the authority of the same, That no person or persons whatsoever, from and after the first day of May, which shall be in the year of our lord one thousand seven hundred and forty-one, upon any contract to be made after the said first day of May, shall, directly or indirectly, take, for loan of any monies, wares, merchandizes, or commodities whatsoever, above the value of six pounds, by way of discount or interest, for the forbearance of one hundred pounds, for one year, and so after that rate for a greater or lesser sum, or for a longer or shorter time; and that all bonds, contracts, and assurances whatsoever, made after the time aforesaid, for the payment of any principal or money to be lent, or covenanted to be performed, upon or for any usury, whereupon or whereby there shall be reserved or taken above the rate of six pounds in the hundred, as aforesaid, shall be utterly void: and that all and every person or persons whatsoever, which, after the time aforesaid, upon any contract to be made, after the said first day of May, shall take, accept, Persons taking
more, to forfeit
double the va-
lue.
and receive, by way or means of any corrupt bargain,

loan, exchange, shift, or interest, of any monies, wares, merchandizes, or other thing or things whatsoever, or by any deceitful ways or means, or by any discount, covin, device, or deceitful conveyance, for the forbearing or giving day of payment, for one whole year, of or for their money or other thing, above the sum of six pounds for the forbearing of one hundred pounds for a year, and so after that rate for a greater or lesser sum, or for a longer or shorter time, shall forfeit and lose, for every such offence, the double value of monies, wares, merchandizes, and other things so lent, bargained, exchanged, or shifted; the one moiety of all which forfeitures to be to our sovereign lord the king, his heirs and successors, for and towards the support of this government, and the contingent charges thereof, and the other moiety to him or them that will sue for the same, by action of debt, bill, plaint, or information, in any court of record (a) within this province; wherein no essoin, protection, or wager of law, shall be allowed or admitted of.

a [To be bro't in the county where the cause of action shall arise. 2, 1777, c. 115, s. 9; 1806, c. 693, s. 1; and within 3 years, 1808, c. 743.]

CHAP. 29.

An Act to prevent the taking away boats, canoes, or pettiaguas, from landings, or elsewhere, without leave.

1. To prevent taking boats, canoes, and pettiaguas, from landings, or elsewhere, without leave :

2. We pray that it may be enacted, *And be it enacted by his excellency GABRIEL JOHNSTON, Esq. Governor, by and with the advice and consent of his majesty's council, and General Assembly of this province, and it is hereby enacted by the authority of the same,* That any person or persons who, after the ratification of this act, shall take away from any landing or other place where the same shall be, any boat, canoe, or pettiagua, belonging to, or in the custody of any person whatsoever, without the consent and leave of the owner or possessor of such boat, canoe, or pettiagua, or shall loose, unmoor, or turn such boat, canoe, or pettiagua adrift, such offender or offenders shall severally forfeit and pay, to the party who shall own, or in whose custody and possession such boat, canoe, or pettiagua was, the sum of twenty shillings, proclamation money; to be recovered by a warrant from any justice of the peace within the county where the offence shall be committed, who is hereby empowered and required to hear and determine all such offences: and if any offender or

Persons taking boats, &c. without leave, to forfeit 20s. to the owner.

offenders shall, after conviction, neglect or refuse to pay the said sum of twenty shillings, proclamation money, in such case, it shall and may be lawful for the said justice, by his warrant, to commit such person to the gaol of the county, where he shall remain until he shall have paid the same, and the accruing costs.

Offenders refusing to pay, justice may commit them to prison.

3. *Provided always*, That nothing in this act shall be understood or construed to debar any person from his or her action at common law, for any damage sustained, by reason of any boat, canoe, or pettiagua, to them belonging, so taken or unloosed, unmoored or turned adrift, from any landing or other place where the same was left, against any person whatsoever, notwithstanding such person shall have paid the penalty by this act inflicted; any thing herein contained, or any law, usage, or custom, to the contrary, notwithstanding.

Not to debar any person from his action at common law, for damage sustained.

4. *And be it further enacted by the authority aforesaid*, That if any white servant, negro, or slave, shall offend against this act, and be thereof convicted, and the master, mistress, or owner of such white servant, negro, or slave, shall refuse to pay the said sum of twenty shillings, proclamation money, such servant or slave shall suffer correction, by whipping, at the discretion of the magistrate, not exceeding thirty-nine lashes.

Servant or slave offending, and the master refusing to pay the fine, such servant or slave to be whipt.

5. *Provided always, and be it enacted*, That neither this act, nor the penalties thereof, shall be construed to extend to any person who shall press any boat, canoe, or pettiagua, by public authority, or to any person who shall seize his own proper boat, canoe, or pettiagua, or to any other person or persons, being lawfully empowered so to do by the owner, from any place or landing, or from any person in whose custody he shall find the same, or to any servant or slave taking any boat, canoe, or pettiagua, from any landing or other place, by order of his or her master, mistress, or overseer.

Not to extend to persons who shall press vessels by authority, or proper owners.

6. *And be it further enacted*, That if any master, mistress, or overseer, shall order any servant or slave, belonging to them, or under the care of any of them, to take from any landing, or other place, any boat, canoe, or pettiagua, contrary to the intent and meaning of this act, such master, mistress, or overseer of such servant, or slave so offending, shall be liable to the forfeitures and penalties of this act, as if they, in their proper person, had done the same; any thing herein before contained, to the contrary, notwithstanding.

Master ordering servant or slave to take any vessel, liable to the penalty.

Repealing
clause.

7. *And be it further enacted by the authority aforesaid,* That all and every other act and acts, and every clause and article thereof, so far as relates to prevent the taking boats, canoes, or pettiaguas, from landings, or elsewhere, without leave, is and are hereby repealed and made void, to all intents and purposes, as if the same had never been made.

CHAP. 30.

An Act for the better observation and keeping of the Lord's day, commonly called Sunday; and for the more effectual suppression of vice and immorality.

1. WHEREAS in well regulated governments, effectual care is always taken, that the day set apart for public worship, be observed and kept holy, and to suppress vice and immorality: Wherefore,

No person to do
any work, &c.
on the lord's
day, on penalty
of 10s.

2. We pray that it may be enacted, *And be it enacted by his excellency GABRIEL JOHNSTON, Esquire, Governor, by and with the advice and consent of his majesty's council, and General Assembly of this province, and it is hereby enacted by the authority of the same,* That all and every person and persons whatsoever, shall, on the Lord's day, commonly called Sunday, carefully apply themselves to the duties of religion and piety; and that no tradesman, artificer, planter, labourer, or other person whatsoever, shall, upon the land or water, do or exercise any labour, business, or work, of their ordinary callings, (works of necessity and charity only excepted,) nor employ themselves either in hunting, fishing, or fowling, nor use any game, sport, or play, on the Lord's day aforesaid, or any part thereof, upon pain that every person so offending, being of the age of fourteen years, and upwards, shall forfeit and pay the sum of ten shillings, proclamation money.

Persons swear-
ing in the hear-
ing of a justice,
to pay 2s. 6d.

3. *And be it further enacted by the authority aforesaid,* That if any person or persons shall profanely swear or curse, in the hearing of any justice of the peace, or shall be convicted of profanely swearing and cursing, by the oath of one or more witness or witnesses, or confession of the party before any justice or justices of the peace, every such offender shall forfeit and pay the sum of two shillings and six pence, of the like money, for every oath or curse: and if any person, executing any public office, shall profanely swear or curse, being first convict-

Public officer
convicted of the
same, to pay 5s.

ed, as aforesaid, such person shall forfeit and pay the sum of five shillings, of the like money, for each and every oath or curse.

4. *And be it further enacted*, That if any person or persons shall prophanely swear and curse, in the presence of any court of record in this government, such offender or offenders shall immediately pay the sum of ten shillings, of the like money, for each and every oath or curse; to be deposited in the hands of the chairman of the said court, and by him accounted for and paid, as herein after is directed; or to sit in the stocks, not exceeding three hours, by order of such court.

Persons swearing in the presence of a court, to pay 10s. or be put in the stocks.

5. *And be it further enacted by the authority aforesaid*, That every person convicted of drunkenness, by view of any justice of the peace, confession of the party, or oath of one or more witness or witnesses, such person so convicted, shall, if such offence was committed on the Lord's day, forfeit and pay the sum of five shillings, of the like money; but if on any other day, the sum of two shillings and six pence, for each and every such offence.

Persons getting drunk on Sunday to pay 5s.---, on any other day, 2s. 6d.

6. And for the better execution of all and every of the foregoing orders, *Be it further enacted*, That all and every justice and justices of the peace, within his or their respective county, shall have full power and authority to convene before him or them, any person or persons who shall offend in any of the particulars before mentioned, in his or their hearing, or on other legal conviction of any such offence, and to impose the said fine or penalty for the same, and to restrain or commit the offender until it be satisfied, or to cause the same to be levied by distress and sale of the offender's goods, returning the overplus, if any, to the owner: and in case any such offender be unable to satisfy such fine, to cause him to be put in the stocks, not exceeding three hours.

Justices' power to hear and determine offences against this act.

7. *Provided always*. That all informations against the aforesaid offences, shall be made within ten days after such offence or offences committed, and not after.

Information to be made within ten days.

8. *And be it further enacted by the authority aforesaid*, That all fines accruing and becoming due by virtue of this act, shall be levied as soon as may be after conviction, one half to the informer, the other half to the use of the parish (a) where such offence shall be committed; and the chairman and justices of the several courts of the several counties of this province, are hereby directed to account for, upon oath, and pay such fine or fines as shall

Fines appropriated, and how to be paid.

a [County, 1777, c. 115, s. 83.]

or may by them, or any of them, be received, by virtue of this act, to the churchwardens of the respective parishes of this government, at least once a year, when the same shall be demanded by the churchwardens; under the penalty of paying the sum of twenty pounds, proclamation money, for every refusal, to be levied and applied as aforesaid.

Persons committing fornication to forfeit 25s

a [Fornication & adultery punished by 1805, c. 684.]

Single women being with child, &c. & refusing to tell the father, to pay the fine, and to give security to keep the child.

If she declares the father, he shall give security to perform the order of the court thereon.

Justices to bind to the next court, persons charged with being the father of a child unborn.

9. *And be it further enacted by the authority aforesaid,* That if any persons commit fornication (a) upon due conviction, each of them shall forfeit and pay twenty-five shillings, proclamation money, for each and every such offence; to be recovered, and applied to the same use, as the other fines in this act.

10. *And be it further enacted,* That any two justices of the peace, upon their own knowledge, or information made to them, that any single woman within their county is big with child, or delivered of a child or children, may cause such woman to be brought before them, and examine her, upon oath, concerning the father; and if she shall refuse to declare the father, she shall pay the fines in this act before mentioned, and give sufficient security, to keep such child or children from being chargeable to the parish, or shall be committed to prison, until she shall declare the same, or pay the fine aforesaid, and give security as aforesaid: but in case such woman shall, upon oath, before the said justices, accuse any man of being the father (b) of a bastard child or children, begotten of her body, such person so accused shall be adjudged the reputed father of such child or children, and stand charged with the maintenance of the same, as the county court shall order, and give security, to the justices of the said court, to perform the said order, and to indemnify the parish where such child or children shall be born, free from charges for his, her, or their maintenance, and may be committed to prison until he find securities for the same, if such security is not by the woman before given.

11. *And be it further enacted,* That the said (c) two justices of the peace, at their discretion, may bind, to the next county court, him that is charged, on oath, as aforesaid, to have begotten a bastard child, which shall not

b [How to proceed when he does not appear, or pay for the maintenance of the child, 1799, c. 531, sec. 1 & 3.—Entitled to have an issue made up, 1814, c. 871, s. 1.]

c [Extended to any two justices of the county, 1799, c. 531, s. 2.]

be then born; and the county court may continue such person upon security until the woman shall be delivered, that he may be forthcoming when the child is born.

12. *And be it further enacted by the authority aforesaid,* That this act shall be publicly read, two several times in the year, in all parish churches and chapels, or for want of such, in the place where divine service is performed in every parish within this government, by the minister, clerk or reader of each parish, immediately after divine service, that is to say, on the first or second Sunday in April, and on the first or second Sunday in September, under the penalty of twenty shillings, proclamation money, for every such omission or neglect; to be levied by a warrant from a justice, and applied to the use of the parish (*a*) where the offence shall be committed; and the churchwardens of every parish are hereby required to provide a copy of this act, at the charge of the parish.

This act to be read twice a year in churches, by the minister, &c. on penalty of 20s.

a [County, 1777, c. 115, § 83.]

13. *And be it further enacted by the authority aforesaid,* That all and every other act and acts, and every clause and article thereof, heretofore made, so far as relates to the suppression of vice, or restraint and punishment of wicked and dissolute persons, or any matter or thing within the purview of this act, is and are hereby repealed and made void, to all intents and purposes, as if the same had never been made.

Repealing clause.

CHAP. 31.

An act for ascertaining the damage upon protested bills of exchange.

1. FOR ascertaining the damage upon protested bills of exchange, We pray that it may be enacted, *And be it enacted by his excellency GABRIEL JOHNSTON, esquire, governor, by and with the advice and consent of his majesty's council, and General Assembly of this province, and by the authority of the same,* That where any (*b*) bill of exchange is, or shall hereafter be drawn, for the payment of any sum of money, in which the value is or shall be expressed to be received, and such bill is or shall be protested, for non-acceptance or non-payment, the same shall carry interest from the date thereof, after the rate of ten per cent. per annum, until the money therein drawn for, shall be fully satisfied and paid.

Protested bills of exchange to carry interest from the date till paid, at 10 per cent.

b [Inland bills protested, to bear 6 per cent, 1796, c. 464, s. 1.]

Interest allowed but 18 months, till the bill presented, &c.

15 per cent. allowed for damage, with costs of protest.

a [10 per cent. on inland bills, 1796, c. 464, s. 2.]

Actions may be brought against drawer and indorser jointly, or separately.

b [Interest 6 per cent. on inland bills, 1796, c. 464, s. 1.]
Repealing clause.

2. But least any person having any such bill, should, for the sake of the interest, delay negotiating the same, or if, after it shall be protested, shall not demand payment thereof of the drawer or endorser, *It is further enacted and declared*, That no person whatsoever shall pay more than eighteen months' interest, from the date of any such bill, till it shall be presented protested to the drawer or indorser thereof.

3. *And be it further enacted by the authority aforesaid*, That where any bill, drawn before the making of this act, or which shall hereafter be drawn, is or shall be protested as aforesaid, there shall be paid unto such person or persons as shall have right to demand the same, for his, her or their damage, in that behalf sustained, after the rate of fifteen (a) per cent. for the sum expressed in the said bill, together with the costs and charges of the protest, and no more.

4. *And be it further enacted by the authority aforesaid*, That it shall and may be lawful for any person or persons having a right to demand any sum of money due upon a protested bill of exchange, to commence and prosecute an action for principal, interest and charges of protest, against the drawer and indorsers jointly, or against either of them separately, and judgment shall and may be given for such principal draught and charges, and interest, after the rate of ten (b) per cent. per annum, as aforesaid, to the time of such judgment.

5. *And be it further enacted by the authority aforesaid*, That all and every other act and acts, and every clause and article thereof heretofore made, so far as relate to any matter or thing whatsoever within the purview of this act, is and are hereby repealed and made void, to all intents and purposes, as if the same had never been made.

CHAP. 32.

An act for regulating weights and measures.

1. WHEREAS many notorious frauds and deceits are daily committed, by false weights and measures; For prevention whereof,

2. We pray that it may be enacted, *And be it enacted by his excellency GABRIEL JOHNSTON, esquire, governor, by and with the advice and consent of his majesty's council, and General Assembly of this province, and it is hereby enacted by the authority of the same,* That no inhabitant or trader shall buy or sell, or otherwise make use of, in trading, any other weights or measures (a) than are made and used according to the standard in his majesty's exchequer, and the statutes of *England*, in that case provided.

Weights and measures to be according to the standard in the exchequer, &c.

3. And for the discovery of abuses, *Be it further enacted by the authority aforesaid,* That the justices of each and every county within this government, shall, within two years next after the ratification of this act, at the charge of each county respectively, provide sealed weights of half-hundred, quarters of hundreds, half quarters of hundreds, seven pounds, four pounds, two pounds, one pound and half pound; and measures, of ell and yard, of brass or copper, and measures of half bushel, peck and gallon, of dry measure; and a gallon, pottle, quart and pint of wine measure; (for the payment of which charge the said justices are hereby empowered to levy a tax on their respective counties,) to be kept by such person, and in such place, as the justices of each respective county shall appoint, such person first giving sufficient security to the said justices, in the sum of fifty pounds, proclamation money: And the said justices shall also find and provide for the said person a stamp for brass, tin, iron, lead or pewter weights or measures, and also a brand for wooden measures, of the letters N. C., upon pain of forfeiting and paying the sum of ten pounds, proclamation money; to be recovered from the said justices, by action of debt, bill, plaint or information, in the general court of this province, and applied to the use of our Sovereign Lord the King. (b) for and towards the support of this government, and the contingent charges thereof.

Justices to provide standard weights and measures, and a keeper thereof.

To be provided with a stamp & brand.

4. *And be it further enacted by the authority aforesaid,* That any person whatsoever using weights or measures, shall bring all their measures and weights to the keeper of the standard of the county where such person shall reside or trade, to be there tried by the standard, (c) and

b [State, 1777, c. 115, s. 83.]

Who shall try & stamp all weights and measures.

a [Liquor to be retailed by sealed measures, or such as contain the quantity, 1798, c. 501, s. 1.]

c To be examined by the standard keeper, once in two years, 1818, c. 965.]

Persons selling
by untried
weights or mea-
sures, to forfeit
10*l*.

a [Before a jus-
tice, 1803, c.
627, s. 1.]

Steelyards to be
tried once a
year, &c. on pe-
nalty of 20*s*.

b [§50—1818,
c. 965.]

This oath.

Justices may
take county
weights & mea-
sures into their
custody, and re-
ceive all sums
raised to pro-
vide such
weights, &c.
(Temporary.)

Repealing
clause.

For fees to

sealed or stamped : And if any person or persons shall buy, sell or barter, by any weight or measure which shall not be tried by the standard, and sealed or stamped as aforesaid, he, she or they so offending, shall, for every such offence, forfeit and pay the sum of ten pounds proclamation money, one half to the use of the county where such offence shall be committed, and the other half to the party who shall sue for the same ; to be recovered in any court of record (*a*) in this government, wherein no essoin, protection, privilege, injunction, or wager of law, shall be allowed.

5. And whereas, steelyards, by use, are subject to alteration, *Be it further enacted by the authority aforesaid*, That all and every person who shall use, buy or sell by steelyards, shall, once every year, try the same with the standard, and take a certificate from the keeper of the standard for the county wherein such person shall reside, upon pain of twenty shillings, (*b*) proclamation money ; to be recovered and applied as aforesaid.

6. *And be it further enacted by the authority aforesaid*, That the standard keeper of each and every county shall, at the next court to be held for the county in which he shall reside, take the following oath, viz :

You shall swear, that you will not stamp, seal, or give any certificate for any steelyards, weights or measures, but such as shall, as near as possible, agree with the standard in your keeping ; and that you will, in all respects, truly and faithfully discharge and execute the power and trust by this act reposed in you, to the best of your ability and capacity. *So help you God*.

7. *And be it further enacted by the authority aforesaid*, That the justices of every county respectively, shall have power to take and receive into their custody, all such weights and measures as have been already provided by their respective county or parish, and shall also demand and receive from all and every person or persons whatsoever, all such sums of money as have been already raised to purchase such weights and measures, and dispose of and apply the same according to the directions of this act.

8. *And be it further enacted by the authority aforesaid*, That all and every other act and acts, and every clause and article thereof, heretofore made, so far as relate to

weights and measures, or any other matter or thing within the purview of this act, is and are hereby repealed and made void, to all intents and purposes, as if the same had never been made. standard keeper, see 1793, c. 395, & 1818, c. 965.]

CHAP. 33.

An Act for the building and maintaining of court-houses, prisons, and stocks, in every county within this province, and appointing rules to each county prison, for debtors.

1. WE pray that it may be enacted, *And be it enacted by his excellency GABRIEL JOHNSTON, Esq. Governor, by and with the advice and consent of his majesty's council, and General Assembly of this province, and it is hereby enacted by the authority of the same,* That the justices in all and every county or counties within this province where there is not a suitable provision already made, shall, and are hereby empowered and required, at the next succeeding court of their respective counties, after the ratification of this act, to lay a sufficient levy (*a*) upon the inhabitants of the said counties, not exceeding one shilling, proclamation money, *per poll*, for two years, for the building a court-house, prison, and stocks, or any such of them as shall be wanting; which levy shall be paid and collected by the sheriff of each county, in the same manner as all other public and parish taxes and levies are paid and collected, and by him shall be accounted for to the justices of the county court, upon oath; and the said sheriff shall be allowed three *per cent.* for collecting the same. Justices to lay a tax, for building court-houses, prisons and stocks.

a [Power enlarged by 1793, c. 433, s. 1—1816, c. 911.]

2. *And be it further enacted by the authority aforesaid,* That the justices of each county shall and may, from time to time, and at all times hereafter, employ persons to keep and maintain the court-house, prison, and stocks, already built, and such as are to be built, by virtue of this or any other act, or to re-build such as have fallen to decay or ruin, and the same to keep in good repair, by laying a poll-tax on the inhabitants of their respective counties as aforesaid. Justices to employ persons to keep court-houses, &c. in repair.

3. *And be it further enacted by the authority aforesaid,* That if any person shall neglect or refuse to pay the aforesaid levies, in manner aforesaid, and shall be in arrear, after the last day of payment, such person shall be liable to double distress; to be levied on his goods and chattels by the sheriff of the county where such delin-

Persons neglecting to pay their levies, liable to double distress.

County courts to lay out prison bounds, and all prisoners, not committed for felony or treason, to have liberty thereof, on giving security.

Bounds to be recorded, &c.

quent inhabits: and for the preservation of the health of such persons as shall, at any time hereafter, be committed to the county prisons, the court shall have power to mark out such a parcel of land as they shall think fit, not exceeding six acres, adjoining to the prison, for the rules thereof; and every prisoner, not committed for treason or felony, giving good security (*a*) to the sheriff of the county to keep within the said rules, shall have liberty to walk therein out of the prison, for the preservation of his or their health: and every prisoner giving such security as aforesaid, and keeping continually within the said rules, shall be, and is hereby adjudged and declared to be, in law, a true prisoner; and that every person there-with concerned may know the true bounds of the said rules, the same shall be recorded in the county records, and the marks thereof shall, from time to time, be renewed, as occasion may require.

a [The bonds to be assigned to the party at whose suit he was committed, and to have the force of a judgment, 1759, c. 65, s. 2.]

CHAP. 34.

See 1715, c. 7,
& 1748, c. 44.

An Act for the relief of such persons as have suffered, or may suffer, by the registers of the several counties within this province neglecting to register their deeds or mesne conveyances; or who, through ignorance or neglect, have not had the same acknowledged, proved, and registered.

1. WHEREAS, by an act of the General Assembly of this province, entitled, An Act to appoint public registers, and to direct the method to be observed in conveying lands, goods, and chattels, and to prevent fraudulent deeds and mortgages, amongst other things it is enacted, that no conveyance or bill of sale for land, (other than mortgage,) in what manner or form soever drawn, should be good and available in law, unless the same was acknowledged by the vender, or proved, by one or more evidences, upon oath, either before the chief justice for the time being, or in the court of the precinct where the land lay, within twelve months after the date of the same deed: And whereas several of the public registers of the several counties of this province, have neglected to register several deeds or mesne conveyances, pursuant to the before recited act, and several persons, through ignorance or neglect, have failed to prove, acknowledge, and regis-

ter their deeds or mesne conveyances; and also, several persons have recorded their deeds or mesne conveyances, in the clerk's office of the several precincts or counties in which such lands lie, believing the same as effectual as if the said deed or mesne conveyance had been registered in the register's office as aforesaid; whereby several persons' titles to their lands and tenements are become precarious, to the great prejudice of such persons: to the end therefore that all possible relief may be given to the persons whose estates, titles, and interests, may be affected thereby;

2. We pray that it may be enacted, *And be it enacted by his excellency GABRIEL JOHNSTON, Esquire, Governor, by and with the advice and consent of his majesty's council, and General Assembly of this province, and it is hereby enacted by the authority of the same,* That all deeds and mesne conveyances of lands, tenements, and hereditaments, not already acknowledged, proved, and registered, by any neglect as aforesaid, the public register of every county where such neglect hath happened, shall register such deed or mesne conveyance, within twelve months after the ratification of this act; provided such deeds or mesne conveyances, be delivered to the register of each county where the land lieth, within ten months after the ratification of the same.

All deeds, &c. not registered, register to register them within one year, if they are delivered to him within ten months.

3. *And be it further enacted by the authority aforesaid,* That all deeds or mesne conveyances, which have been recorded by the clerk of any precinct or county court within this province where such lands lie, or have been heretofore registered by the public register of any of the said precincts or counties within this province where such lands lie, though not within one year after the date of such conveyance, shall be good and valid in law; and all deeds and mesne conveyances hereafter to be proved, acknowledged, and registered, in the manner as is by this act directed, shall be good and valid, to all intents and purposes, as if the said deeds and mesne conveyances had been registered pursuant to the before recited act: and such registry of all and every deed or mesne conveyance; already registered, or that hereafter shall be registered, by virtue of this or the before recited act, or a copy thereof, properly attested by the register, shall and may (where such original deed or mesne conveyance is lost,) be given in evidence in any court within this province, in such suit or suits wherein there may be occasion to give such

All such as have been registered, tho' not within due time, declared valid.

And such as are registered, by this act to be valid.

Registry, or copy, in certain cases, may be given in evidence.

Register neglecting to register deeds, &c. within two months after delivery, to forfeit 20*l*.

a[County, 1777, c. 115, s. 83.]

registered deed or mesne conveyance in evidence; any law, usage, or custom, to the contrary, notwithstanding.

4. *And be it further enacted by the authority aforesaid,* That every register that shall neglect, refuse, or delay to register any deeds, mesne conveyances, or any other instruments of writing, within two months after delivered to him, such register or registers, for each and every two months so neglecting, refusing, or delaying, shall forfeit and pay the sum of twenty pounds, proclamation money; one half to the use of the parish, (*a*) and the other half to him or them that shall sue for the same, to be recovered, by action of debt, bill, plaint, or information, in any court of record in this government, wherein no essoin, injunction, or wager of law, shall be allowed or admitted of.

CHAP. 35.

An act concerning servants and slaves.

No christian imported, &c. shall be a servant, unless by indenture or agreement.

Difference between master of vessels & persons imported, to be determined by the county court.

1. *Be it enacted by his excellency GABRIEL JOHNSTON, Esquire, Governor, by and with the advice and consent of his majesty's council, and the General Assembly of this province, and it is hereby enacted by the authority of the same,* That no person whatsoever, being a christian, or of christian parentage, who, from and after the ratification of this act, shall be imported or brought into this province, shall be deemed a servant for any term of years, unless the person importing him or her shall produce an indenture, or some specialty or agreement, signifying that the person so imported did contract to serve such importer, or his assigns, any number of years, in consideration of his or her passage, or some other consideration therein expressed; and upon any contest arising between the master of any vessel, or other person importing any servant or servants without indenture, upon any bargain or specialty as aforesaid, the same shall be determined at the next county court to be held for the county where the said servant or servants shall be imported, the justices of which court are hereby empowered to hear and determine the same, in a summary way, and such determination or judgment shall be conclusive and binding on the importer or servant or servants, either for the discharge of the said servant or servants, or to oblige him, her or them to serve the importer, or his assigns, as the matter shall appear.

2. *And be it further enacted by the authority aforesaid,* That if any christian servant, whether he or she be a servant by importation, or otherwise, shall, at any time or times, absent him or herself from the service of his or her master or mistress, without license first had, he or she shall satisfy and make good such loss of time, by serving, after their time of service by indenture or otherwise is expired, double the time of service lost or neglected by such absence; and also such longer time as the county court shall think fit to adjudge, in consideration of any further charge or damage the master or mistress of such servant may have sustained, by reason of his or her absence as aforesaid.

Servants absent-
ing themselves,
to serve double
time besides
what the court
shall order for
charges, &c.

3. And as an encouragement for christian servants to perform their service with fidelity and cheerfulness; *Be it further enacted by the authority aforesaid,* That all masters and owners of any servant or servants, shall find and provide for their servant or servants, wholesome and competent diet, cloathing and lodging, at the discretion of the county court, and shall not at any time give immoderate correction.

Master to pro-
vide necessaries
for servants, &c.

4. *And be it further enacted by the authority aforesaid,* That all servants by indenture or otherwise, as aforesaid, shall have their complaints received by a justice of the peace, who, if he find cause, shall bind the master, mistress or overseer, over, to answer the complaint at the next county court; and it shall be there determined: And all complaints of any servant or servants shall and may, either immediately, or as aforesaid, by virtue hereof, be received at any time, upon petition or information, in the court of the county wherein they reside, without the formal process of an action; and also, full power and authority is hereby given to the said court, at their discretion, (having first summoned the master, mistress or overseer, to justify themselves, if they think fit,) to adjudge, order and appoint what shall be necessary, as to diet, lodging, cloathing or correction: And if any master, mistress or overseer shall not thereupon comply with the order of the said court, the said court is hereby authorised and empowered, upon a second just complaint, to order such servant or servants to be immediately sold, at public vendue, by the sheriff; and after the charges are deducted, the remainder of what the said servant or servants shall be sold for to be paid to the owner.

Servants com-
plaining, justice
may bind the
master to next
court.

Complaints to
be heard with-
out formal pro-
cess of action.

Master not com-
plying with the
order of the
court, servant
to be sold,

If by sickness, &c. he cannot be sold for enough to pay the charges, to be sent to the church wardens and provided for by the master.

Charges to be levied on the master.

Servants' complaints for their wages, &c. to be heard by the county court, &c.

Master discharging sick servant, before he is free, and not endeavoring his recovery, to forfeit 5*l.* &c.

5. *Provided always*, That if such servant or servants shall be sick or lame, or otherwise rendered so incapable that he, she or they cannot be sold for such value at least as shall satisfy the fees, and other incident charges accrued, the said court shall then order such servant or servants into the care of the churchwardens of the parish; and the master, mistress or owner shall provide the said servant or servants with such convenient necessities as they shall direct and judge sufficient for his, her or their support, until the time due by law from such servant or servants to their master, mistress or owner, shall be expired, or until such servant or servants shall be so recovered as to be sold, for defraying the said fees and charges.

6. *And be it further enacted*, That the said court, from time to time, shall order the charges of keeping such servant or servants, to be levied upon the goods and chattels of the master or owner of such servant or servants, in case they should neglect or refuse to provide for the same.

7. *And be it further enacted by the authority aforesaid*, That all servants aforesaid, whether by indenture or otherwise, as well feme coverts as others, shall, in the like manner, (as is provided upon complaints of misusage,) have their petitions received in the said county court, for their wages, freedom and freedom dues, (in this act hereafter expressed,) without the formal process of an action; and proceedings and judgment shall, in like manner, be had thereupon.

8. *And be it further enacted by the authority aforesaid*, That no master or mistress of any servant or servants, who shall happen to be sick or diseased during the time of their servitude, and unable to perform their daily labour, shall, upon any pretext whatsoever, remit to such servant or servants any part of his, her, or their time, to be cleared of them, whereby the said servant or servants may perish, or become a charge to the parish: And whosoever shall hereafter offend herein, or shall not use and endeavour all lawful means for recovery of such their servant or servants as shall happen to be sick or diseased, during the time of his, her or their servitude, shall forfeit, for each and every servant so turned off or neglected, five pounds proclamation money; to be levied by an order from the county court before whom the fact shall be proved, by the oath of one or more witness or

witnesses, and to be paid into the hands of the church-wardens of that parish where the offence shall be committed, and disposed of towards the support and maintenance of such servant or servants so turned off or neglected, for the recovery of his, her or their health and strength; and such servant or servants shall be, by the county court, or any two justices, during the time of their infirmity, ordered into the hands and care of the church-wardens of the parish in which his, her, or their master or owner shall dwell: But in case such sick or diseased servant or servants respectively shall not live to the expending the said whole sum of five pounds, proclamation money, then the remainder to be disposed of to the use of that parish; or in case the said sum of five pounds should not be sufficient to support such servant during his servitude, or until his recovery, in such case the county court is hereby authorised and empowered to order a sufficiency to be levied (from time to time, as the same shall become due,) upon the goods and chattels of the master or owner of such servant or servants, if they shall neglect or refuse to provide the same, agreeable to the orders of the said court; and such servant or servants so neglected or turned off, shall, upon their recovery, be set free from their master or owner.

If 5*l*. shall not be sufficient to support such servant, court may order more.

Servant so turned off, shall be free on his recovery.

9. *Provided always, and be it further enacted*, That if any servant or servants in this government, shall, through his, her, or their own wilful misbehaviour, happen to have any disease, or any broken bones, bruises, or other impediments, whereby they may be disabled to perform their labour as they ought to do, and become chargeable to their master or owner, such servant or servants shall serve his, her, or their master or owner, after the time of his, her, or their service by indenture or otherwise is expired, such time as shall, by the county court, be adjudged sufficient, to satisfy the charges expended on him, her, or them, for his, her, or their recovery; and shall also serve over so much time as he, she, or they, by any such means, were disabled to serve; any thing herein contained to the contrary, notwithstanding.

Servants bringing sickness, &c. on themselves to serve for it, &c.

10. *And be it further enacted by the authority aforesaid*, That if any servant or servants shall unjustly vex and trouble his, her, or their master or owner, with groundless complaints against them to the county court, or to any justice or justices of the peace, such servant or servants shall, by the county court be ordered to serve his,

Servants making false complaints, to serve double the time lost.

her, or their master or owner, so injured by such unjust and groundless vexation, after the expiration of the time he, she, or they have then to serve, the double term and space of that time he, she, or they neglected and lost, in prosecution of such complaints.

Servants put in-
to jail for their
offences, to
serve double
time, &c.

11. *And be it further enacted by the authority aforesaid,* That every servant who shall be in gaol, for his, her, or their own offence, shall serve his, her, or their master or owner, double the time he, she, or they shall there remain, after the expiration of the time he, she, or they have to serve by indenture or otherwise: and further, serve his, her, or their said master or owner, such time as shall be ordered by the county court, as a satisfaction for the fees and other charges his, her, or their master or owner hath expended for such servant or servants.

No free person
to trade with
servants, or
slaves, in pe-
nalty of treble
the value traded
for, and 6*l*.

12. *And be it further enacted by the authority aforesaid,* That no free man or trader whatsoever, shall buy, sell, trade, barter, or borrow any commodities whatsoever, with, to, or from any apprentice or servant, whether so by indenture or otherwise, or with any slave within this government, without the consent of the master, mistress, or owner of such apprentice, servant, or slave, (a) upon pain of forfeiting treble the value of the commodity or commodities so traded for, bartered or sold; and also, shall pay the sum of six pounds, proclamation money, to the use of the said master, mistress, or owner; to be recovered, in the court of the county where the offence shall be committed, by action of debt, bill, plaint, or information, wherein no essoin, protection, injunction, or wager of law, shall be allowed or admitted of: and if it shall so happen that the person so offending shall not be able to pay treble the value of the commodities so traded for, sold or bartered, and the sum of six pounds, such persons shall then be adjudged, by the county court, to be sold as a servant for the same.

Offender not a-
ble to pay, to be
sold for a ser-
vant.

Master not su-
ing in 6 months,
any other per-
son may.

13. *Provided always,* That if the master, mistress, or owner of such apprentice, servant, or slave, shall not, within six months after he or she shall have information or knowledge of such offence, prosecute the offender or offenders for the same, that then it shall and may be lawful for any other person so to do, and to have and receive

a [As to slaves the permission must be in writing—the penalty is 10*l*. 1788, c. 25, and §50 by 1819, c. 1001—See also 1791, c. 335, s. 1, and 1805, c. 690.]

every advantage and benefit arising from such prosecution.

14. *And be it further enacted by the authority aforesaid,* That every servant, by indenture or otherwise, who shall embezzle, purloin, wilfully waste, or shall trade, sell, or barter, or otherwise make away any of his or her master or mistress' corn, cattle, sheep, hogs, stock, or other goods or provisions, or commodities whatsoever, shall, upon conviction of every such offence, by one or more testimonies, upon oath, or confession of the party, before any county court within this government, be adjudged, by the said court, to serve his or her said master or mistress such time as the said court shall think reasonable, for the said offence, after the said time by indenture or otherwise, as aforesaid, is expired.

Servants embezzling their master's goods, &c. to serve for it, &c.

15. And whereas many women servants are begotten with child by free men, or servants, to the great prejudice of their master or mistress, whom they serve ; *Be it therefore further enacted by the authority aforesaid,* That if any woman servant shall hereafter be with child, and bring forth the same during the time of her servitude, she shall, for such offence, be adjudged, by the county court, to serve her master or mistress one year, after her term of service by indenture or otherwise is expired.

Woman servant having a child in her servitude, to serve one year for it.

16. *And be it further enacted by the authority aforesaid,* That if any woman servant shall hereafter be delivered of a child, begotten by her master, such servant shall, immediately after delivery, be sold, by the church-wardens of the parish where the offence shall be committed, for one year, after the time of service by indenture or otherwise is expired ; and the money arising by such sale, shall be to the use of the parish : and if any white servant woman shall during the time of her servitude, be delivered of a child, begotten by any negro, mulatto, or Indian, such servant, over and above the time she is by this act to serve her master or owner for such offence, shall be sold, by the church-wardens of the parish, for two years, after the time by indenture or otherwise is expired ; and the money arising thereby applied to the use of the said parish ; and such mulatto child or children of such servant, to be bound, by the county court, until he or she shall arrive at the age of thirty-one years.

If she has a child by her master, church-wardens may sell her for one year, &c.

If by a negro, &c. she may be sold for two years, and the child bound out till 31 years of age, &c.

17. And whereas many abuses have and may be committed, by persons who, under pretence of understanding several trades and mysteries, have procured, and may

hereafter procure, large sums of money to be advanced to them, and have entered, and may hereafter enter, into covenants with merchants and others in Great-Britain, or elsewhere, for the payment of large wages, yearly, though they were, or may be, totally ignorant of, and unable to perform, such trade and mystery; for remedy whereof,

Tradesmen imported on wages, found not to understand their trades, court may cut off their wages.

18. *Be it enacted by the authority aforesaid,* That all and every person or persons already imported, or who shall be hereafter imported, into this government, as a tradesman or workman, on wages, and shall be found not to understand such trade or employment, the master or owner of such servant may bring him or her to any county court of this government; which court, upon complaint made to them of such deceit, are hereby empowered and directed to enquire into the same, and upon finding any such fraud, may judge and direct such satisfaction to be made to the master or owner of such servant, either by defalcation of the wages, or part thereof, as to them shall seem just.

If they refuse to do their duty, or absent themselves, county court may order satisfaction, &c.

19. *And be it further enacted by the authority aforesaid,* That if any person, who is or shall hereafter be imported or brought into this government, as a tradesman or other workman, on wages, shall refuse or neglect to perform his duty, or shall absent himself from his master or owner's service without leave in every such case, it shall and may be lawful for the justices of the county court wherein such master or owner resides, upon complaint, and proof to them made, to order such satisfaction and reparation to the master or owner of such servant, for the damages sustained by him for such refusal or neglect, as to them shall seem just; and for every day such servant shall absent himself from his master or owner's service as aforesaid, to order and direct such servant to serve his or her said master or owner, two days for every day's absence, after his time by indenture or otherwise is expired, and that without any wages to be paid for such service.

Servants' dues.

20. *And be it further enacted by the authority aforesaid,* That there shall be allowed to every servant, whether by indenture or otherwise, not having yearly wages, at the expiration of his or her service, three pounds proclamation money, besides one sufficient suit of wearing cloaths, for such servant or servants.

On complaint of any such person

21. *And be it further enacted by the authority aforesaid,* That each and every justice of the peace for the several

counties within this government, are hereby empowered and directed, upon the complaint of any person who now is, or hereafter shall be, imported into this government, and who was free in any christian country, island or plantation, before his or her transportation hither, who is kept or sold as a slave, to cause the pretended owner of such person complaining, to appear before him, together with such evidence or evidences as shall be material : and, after examination taken, in writing, shall bind them over to appear at the next county court of which he is a member, where the said complaint shall be heard and determined without any formal process of law.

22. *And be it further enacted by the authority aforesaid,* That if any person shall hire or contract himself to serve as an overseer, either upon wages or share of the produce, with any person or planter whatsoever within this government, and shall absent himself or depart from the service of his master or mistress, before the time mentioned in his agreement or contract shall be expired, he shall, for such offence, forfeit his right and title to his wages, or share of the produce.

23. *And be it further enacted by the authority aforesaid,* That if any person or persons whatsoever, shall, directly or indirectly, at any time after the ratification of this act, tempt or persuade any negro or negroes, (a) or other slave or slaves, to leave his, her, or their master or mistress' service, out of an intent and design to carry or convey away him, her or them, out of this government, or shall harbour (b) or conceal him, her or them, for that intent and purpose, and be thereof convicted, by his, her or their own confession, or the oath of one credible witness, such person or persons shall, by the two next justices of the peace, be committed to gaol, or bound over to the next court to be held for the county where the offence shall be committed, and shall be prosecuted by indictment, for the said offence ; and being thereof lawfully convicted, shall, by the said court, be adjudged to pay, to the master or mistress, for each negro or other slave so enticed or persuaded, for the purpose aforesaid, the sum of twenty-five pounds, proclamation money, or the value thereof, to be levied by order of the said court :

sold, justice to examine the matter, and bind the offender, with the witnesses, to the next court ; where the same shall be determined.

Overseer leaving his employment, to forfeit his wages, or share of the crop.

Penalty on persons tempting or persuading, or harbouring or concealing any slave, with an intent to convey him away out of the government.

a [To steal or seduce a slave is punishable capitally by 1779, c. 142.]

b [To harbour a slave under any pretence is subject to a penalty of 50l. 1791, c. 335, s. 4.]

But in case the party offending shall not be found worth lands, goods, or chattels, to the value aforesaid, then the said court shall adjudge him, her or them, to serve the owner of such slave or slaves, or his assigns, five years : and so deliver him, her, or them, over to the master, mistress, or owner of such slave or slaves, so tempted or persuaded as aforesaid, and make record thereof : But if any person or persons shall so tempt and practice with any negro or negroes, or other slave or slaves, and him, her or them, so tempted, shall actually convey away, or send out of this government, and be afterwards apprehended, and convicted thereof, he, she, or they, shall, by the said court, be severally adjudged and condemned as guilty of felony ; and shall suffer accordingly.

And on such as actually convey away any slave he tempts to quit his master's service.

Reward to persons taking up runaways.
[Reward of \$5 to the apprehender, 1819, c. 1014.]

Reward how to be paid.

24. And for encouragement of all persons to take up runaways, *Be it enacted by the authority aforesaid,* That for the taking up servants or slaves, if ten miles, or under, from the house or quarter where such servant or slave was kept, there shall be allowed, by the master, if known, and residing in the county, if not, by the public, as a reward to the taker-up, seven shillings and six pence, proclamation money, and for every mile above ten, three pence, over and above the said sum ; which said several rewards shall be paid by the churchwardens of the parish where such taker-up shall reside, or where he shall bring such runaway before a justice of the peace ; and shall be levied again by the church-wardens of the said parish, upon the said master or owner of such runaway, for reimbursement of the same to the parish : And for the greater certainty in paying the said rewards, and reimbursing the parish, every justice of the peace before whom such runaway shall be brought, upon the taking up, shall grant a certificate thereof, in which he shall mention the proper name and surname of the taker-up, and the county of his or her residence, together with the time and place of taking up the said runaway, and shall also mention the name of the said runaway, and the proper name and surname of the master or owner of such runaway, and the county of his or her residence, together with the distance of miles, in the said justice's judgment, from the place of taking up the said runaway, to the house or quarter where such runaway was kept ; upon producing which certificate to the church-wardens of the parish where the same was granted, they shall pay to the taker-up of such runaway, or his assigns, the reward

aforesaid ; and shall levy the same again as aforesaid : But if it should happen that the master or owner of such runaway should not reside, or have effects in the county where the said certificate shall be granted by the justice as aforesaid, the said church-wardens shall transmit the said certificate to the sheriff of the county where the owner of such runaway resides, or hath effects, who shall, upon receipt thereof, immediately levy the same upon the goods and chattels of the master or owner of such runaway, and return the same to the church-wardens aforesaid, or their order ; any law, usage or custom to the contrary notwithstanding.

25. *And be it further enacted by the authority aforesaid,* That if any negro or other person, who shall be taken up as a runaway, and brought before any justice of the peace, and cannot speak English, or through obstinacy, will not declare the name of his or her owner, such justice shall, in such case, and he is hereby required, by a warrant under his hand, to commit the said negro slave or runaway to the gaol of the county wherein he or she shall be taken up ; and the sheriff, or under-sheriff, of the county into whose custody the said runaway shall be committed, shall forthwith cause notice, in writing, of such commitment, to be set up on the court-house door of the said county, and there continued during the space of two months ; in which notice, a full description of the said runaway and his cloathing shall be particularly set down. And every sheriff failing to give such notice as herein is directed, shall forfeit and pay five pounds, proclamation money ; which said forfeiture shall and may be recovered with costs in any court (a) of record in this government, by action of debt, bill, plaint or information, wherein no essoin, privilege, protection, injunction, or wager of law, shall be allowed : The one moiety whereof shall be to the (b) church-wardens for the use of the parish, as well as towards the defraying the charges that shall arise and become due by virtue of this act, and the other moiety to the person who shall sue for the same.

26. *And be it further enacted by the authority aforesaid,* That if within the space of two months, the owner of any such negro slave or runaway cannot be known, or doth not claim the same, that the sheriff of the said county to whose custody such runaway shall be committed, shall cause the said runaway to be delivered to the next constable, to be by him delivered to the next constable, and

Runaway slave not telling his master, to be committed to the county gaol, & notice given for two months by the sheriff, &c.

Sheriff failing to give such notice, to forfeit 5*l*.

a [Before a justice, 1803, c. 627, s. 1.]

b [County, 1777, c. 115, s. 83.]

Owner not known in two months, runaway to be sent to the public gaol.

so from constable to constable, to the public gaol of this government, after such manner, and to receive such punishment, as in this act is mentioned and directed.

If his owner be not yet known, gaoler may hire him out, &c.

27. *And be it further enacted by the authority aforesaid,* That when any negro or runaway, as aforesaid, shall be delivered to the keeper of the public goal of this government, by virtue of this act, and his or her master or owner cannot be known, it shall and may be lawful for the keeper of the said goal upon his application to the general court, or the nearest county court to the said gaol, or to any two justices, out of court, with the consent of either of the said courts, or two justices, as aforesaid, to let the said negro or runaway to hire, to any person or persons whom they shall approve of, for such sum or sums of money, or quantity of commodities, and for such term or time, as they shall direct; and that out of the money or commodities arising by such hire, all fees relating to the taking up, imprisonment, and conveying to gaol, and charges of maintaining such negro or runaway, shall be first paid and discharged, and the overplus, if any, disposed of as such court, who shall order the said negro or runaway to let out to hire, shall direct.

Owner appearing, runaway to be delivered to him, he paying fees, if the hire is not sufficient.

28. *Provided always,* That when the owner of such negro or runaway shall demand the same, the person to whom such negro or runaway shall be let out to hire, shall forthwith deliver him or her into the custody of the keeper of the public gaol, and shall then also pay the hire, in proportion to the time the said runaway hath served; and the keeper of the said gaol shall deliver the said runaway to his master or owner, he or she paying down all fees and charges of taking up, imprisonment, conveying to gaol, and maintaining such runaway, in case the hire of the said runaway be not sufficient to satisfy the same.

Runaway slave hired out, gaoler to put an iron collar on him, and then not answerable for his escape.

29. *And be it further enacted by the authority aforesaid,* That when the keeper of the said public gaol shall, by direction of such court as aforesaid, let out any negro or runaway to hire, to any person or persons whomsoever, the said keeper shall, at the time of his delivery, cause an iron collar to be put on the neck of such negro or runaway, with the letters P. G. stamped thereon; and that thereafter the said keeper shall not be answerable for any escape of the said negro or runaway.

Runaways taken up, justices to order them to be whipped, &

30. *And be it further enacted by the authority aforesaid,* That when any runaway servants or slave shall be brought before any justice of the peace within this government,

such justice shall, by his warrant, commit the said runaway to the next constable, and therein also order him to give the said runaway so many lashes as the said justice shall think fit, not exceeding the number of thirty-nine, well laid on, on the bare back of such runaway; and then to be conveyed from constable to constable, until the said runaway shall be carried home, or to the public goal, as aforesaid. (a)

sent from constable to constable home, &c.

31. *And be it further enacted*, That every constable, shall, on his receipt of such runaway, give a receipt for him or her; and that every constable failing to execute such warrant, according to the tenor thereof, or refusing to give such receipt, shall forfeit and pay twenty shillings, proclamation money, or the value thereof in bills, to the church-wardens, (b) for the use of the parish wherein such failure shall be; to be recovered by a warrant under the hands of any two justices within the county where such constable shall reside: and such corporal punishment shall not deprive the master or owner of any runaway servant of the other satisfaction herein by this act appointed to be had of such servant, for his or her running away.

Constable refusing to convey runaway, to forfeit 20s.

b [County, 1777, c. 115, s. 83.]

Corporal punishment not to deprive the master of other satisfaction he is entitled to.

32. *And be it further enacted by the authority aforesaid*, That if any sheriff, under-sheriff, or constable, shall set to work, employ, or let out to hire, without order of court as aforesaid, any runaway servant or slave committed to the custody of any of them, or shall detain such runaway longer in his or their custody than by this act is directed, he or they so offending, shall forfeit and pay five pounds, proclamation money; to be recovered, in any court (c) of record in this government, by action of debt, bill, plaint, or information, wherein no essoin, protection, privilege, or wager of law, shall be allowed: one moiety whereof to be paid to the church-wardens, (d) for the use of the parish where the offence shall be committed, and the other to him or them who shall sue for the same: and if any sheriff, or his under-sheriff, or any constable, in to whose hands any runaway servant or slave shall be committed, by virtue of this act, shall negligently or willfully suffer such runaway to escape the said sheriff, under-sheriff, or constable, he or they shall be liable to the action of the party grieved, for recovery of his damages, at the common law, with costs.

Sheriff, &c. employing runaway or keeping him in custody longer than this act directs, to forfeit 5l.

c [Before a justice, 1853, c. 627, s. 1.]

d [County, 1777, c. 115, s. 83.]

Sheriff, &c. suffering runaway to escape, liable to the action of the party grieved.

a [So much of this section as inflicts corporal punishment on white or free servants is not in force.]

Ferry-keepers
to give immedi-
ate passage to
constables
charged with
runaways.

Such ferriages
to be paid by
the church-war-
dens.

When runaways
are supposed to
belong to other
governments,
gaoler to send
an advertise-
ment to the Vir-
ginia or South-
Carolina ga-
zette.

Slaves not to go
armed, &c.
[See 1729, cap.
19, s. 7.]

Offenders may
be taken up,
their arms taken
from them, and
they whipped,
&c.
See 1753, c. 53.

One slave em-
ployed by his
master on a
plantation ex-
cepted.

33. *And be it further enacted by the authority aforesaid,* That the keepers of ferries within this government, shall give immediate passage to all constables, and their assistants, charged with conducting any runaway or runaways, either to the public gaol, or to such runaway or runaways' master or owner, without charging such constable, or their assistants, for their ferriage, either going or returning: but all such ferriages of constables, and their assistants, shall be paid by the church-wardens of the parish where such ferry-keepers respectively live, and levied, as aforesaid, upon the respective masters or owners of such runaways.

34. *And be it further enacted by the authority aforesaid,* That when any negro or other runaway whose owner is supposed to be resident in any other province, shall be committed to any public gaol of this government, the keeper of the said gaol shall, by the first opportunity after such commitment, send a description of such negro or runaway, together with the account of the time of the commitment, and the county where such runaway is committed, to the press, to be advertised in the Virginia, or South-Carolina gazette; for which he shall be reimbursed by the owner of the said slave or runaway.

35. *And be it further enacted by the authority aforesaid,* That no slave shall go armed with gun, sword, club or other weapon, or shall keep any such weapon, or shall hunt or range with a gun in the woods, upon any pretence whatsoever. (except such slave or slaves who shall shall have a certificate, as is hereinafter provided;) and if any slave shall be found offending herein, it shall and may be lawful for any person or persons to seize and take, to his own use, such gun, sword, or other weapon, and to apprehend and deliver such slave to the next constable, who is enjoined and required, without further order or warrant, to give such slave twenty lashes on his or her bare back, and to send him or her home: and the master or owner of such slave shall pay to the taker-up of such armed slave, the same reward as by this act is allowed for taking up of runaways.

36. *Provided always,* That nothing in this act shall be construed or extended, to prohibit or debar any master or owner of any slave or slaves within this government, from employing any one slave in each and every distinct plantation, from hunting in the woods on their

masters' lands, with a gun, to preserve his or her stock, or to kill game for his or her family.

37. *Provided, also,* That such master or owner shall first deliver into the county court, an account in writing, of the name of any such slave to be employed as aforesaid; and the chairman of the court shall sign a certificate (a) that such slave is allowed to carry a gun, and hunt in the woods, on his master or mistress' lands: And the master, mistress, or overseer of such slave shall give him the said certificate, which such slave shall always carry about him, on pain of being apprehended, and punished as aforesaid: Any thing herein before contained to the contrary, notwithstanding.

Such slave to carry a certificate, &c.

38. *And be it further enacted by the authority aforesaid,* That no slave shall go from off the plantation or seat of land where such slave shall be appointed to live, without a certificate of leave, in writing, for so doing, from his or her master or overseer, (negroes wearing liveries always excepted.)

Slaves not to go off the plantation without leave, (livery slaves excepted.)

39. *And be it further enacted by the authority aforesaid,* That no slave shall be permitted, on any pretence whatsoever, to raise any horses, cattle or hogs; and all horses, cattle and hogs, that, six months from the date hereof, shall belong to any slave, or of any slave's mark in this government, shall be seized and sold by the church-wardens (b) of the parish where such horses, cattle or hogs shall be, and the profit thereof be applied, one half to the use of the said parish, and the other half to the use of the informer.

Slaves not to raise horses, cattle or hogs, &c.

40. And whereas many times slaves run away, and lie out hid and lurking in swamps, woods, and other obscure places, killing cattle and hogs, and committing other injuries to the inhabitants of this government; *Be it therefore enacted by the authority aforesaid,* That in all such cases, upon intelligence of any slave or slaves, lying out as aforesaid, any two justices of the peace for the county wherein such slave or slaves is or are supposed to lurk or do mischief, shall, and they are hereby empowered and required, to issue proclamation against such slave or slaves, (reciting his or their names, and the name or names of the owner or owners, if known,) thereby re-

Runaway slaves may be out-lawed.

a [The owner must give bond and security, 175^c, c. 5^d, s. 2.]

b [The county wardens, one half to the poor, the other to the informer, May, 1779, c. 152.]

quiring him or them, and every of them, forthwith to surrender him or themselves; and also, to empower and require the sheriff of the said county to take such power with him as he shall think fit and necessary, for going in search and pursuit of, and effectual apprehending such outlying slave or slaves; which proclamation shall be published on a sabbath day, at the door of every church or chapel, or for want of such at the place where divine service shall be performed in the said county, by the parish clerk, or reader, immediately after divine service: And if any slave or slaves against whom proclamation hath been thus issued, stay out and do not immediately return home, it shall be lawful for any person or persons whatsoever, to kill and destroy such slave or slaves, by such ways and means as he or she shall think fit, without accusation or impeachment of any crime for the same. (a)

Forishment of
negroes, &c.
giving false tes-
timony.

41. And to the end such negro, mulatto, or Indian, bond or free, not being christians, as shall hereafter be produced as an evidence on the trial of any slave or slaves for capital or other crimes, may be under the greater obligation to declare the truth; *Be it further enacted*, That where any such negro, mulatto, or Indian, bond or free, shall, upon due proof made, or pregnant circumstances, appearing before any county court within this government, be found to have given a false testimony, every such offender shall, without further trial, be ordered by the said court, to have one ear nailed to the pillory, and there stand for the space of one hour, and the said ear to be cut off, and thereafter the other ear nailed in like manner, and cut off, at the expiration of one other hour; and moreover, to order every such offender thirty-nine lashes, well laid on, on his or her bare back, at the common whipping-post.

Chairman of the
court to caution
every slave giv-
ing testimony.

42. *And be it further enacted by the authority aforesaid*, That at every such trial of slaves committing capital or other offences, the first person in commission sitting on such trial, shall, before the examination of every negro, mulatto or Indian, not being a christian, charge such to declare the truth.

Owner, &c. of
slave, may ap-
pear, & make
defence for him.

43. *Provided always, and it is hereby intended*, That the master, owner, or overseer of any slave, to be arraigned and tried by virtue of this act, may appear at the

a [How the owner is to obtain the value in certain counties, 1796, c. 467, s. 2—1797, c. 480.]

trial, and make what just defence he can for such slave or slaves; so that such defence do not relate to any formality in the proceeding on the trial. [See 1816, c. 912.]

44. *And be it further enacted by the authority aforesaid,* That if in the dispersing any unlawful assemblies of rebel slaves or conspirators, or seizing the arms and ammunition of such as are prohibited by this act to keep the same, or in apprehending runaways, or in correction by order of the county court, any slave shall happen to be killed or destroyed, the court of the county where such slave shall be killed, upon application of the owner of such slave, and due proof thereof made, shall put a valuation, in proclamation money, upon such slave so killed, and certify such valuation to the next session of assembly; that the said assembly may make suitable allowance thereupon, to the master or owner of such slave.

In certain instances, slaves killed, to be valued by the county court and paid for by the public.

45. *Provided always, and be it further enacted,* That nothing herein contained, shall be so construed, deemed, or taken, to defeat or bar the action of any person or persons, whose slave or slaves shall happen to be killed by any other person whosoever, contrary to the directions and true intent and meaning of this act; but that all and every owner or owners of such slave or slaves, shall and may bring his, her, or their action, for recovery of damages for such slave or slaves so killed.

Other persons killing slaves, owner may have his action against them.

46. *And be it further enacted by the authority aforesaid,* That all and every other act and acts, and every clause and article thereof heretofore made, so far as relate to servants and slaves, or to any other matter or thing whatsoever, within the purview of this act, is and are hereby repealed and made void, to all intents and purposes, as if the same had never been made.

Repealing clause.

SIGNED BY

GABRIEL JOHNSTON, *Esq. Governor.*

WILLIAM SMITH, *President.*

JOHN HODGSON, *Speaker.*

ANNO REGNI GEORGH II.

DECIMO QUINTO.

At a General Assembly, held at Wilmington, in the year of our Lord
one thousand seven hundred and forty-one.

CHAP. 36.

Gabriel Johnston, Esq. Governor.

An act for erecting the upper part of Bertie county into a county, by the name of Northampton county; and for regulating the limits between Society parish, and the Northwest parish of Bertie; and for removing the seat of Bertie county court.

Northampton
county erected.

1. We pray that it may be enacted, *And be it enacted by his excellency GABRIEL JOHNSTON, Esquire, Governor, by and with the advice and consent of his majesty's council, and General Assembly of this province, and it is hereby enacted by the authority of the same, That that part of Bertie county, which lieth north and west of Sandy run, and in a direct line from the head of the said run, to the head of the Beaver-Dam swamp, and Meherrin creek and river, be, and is hereby erected into a county, by the name of Northampton county; and that the said bounds shall, henceforward, be the limits between Society parish, and the Northwest parish of Bertie.*

SIGNED BY

GABRIEL JOHNSTON, *Esq. Governor.*

NATHANIEL RICE, *President.*

JOHN HODGSON, *Speaker.*

ANNO REGNI GEORGHII II.

DECIMO SEPTIMO.

At a General Assembly, held at Edenton, the second day of April, in the year of our Lord one thousand seven hundred and forty-three. Gabriel Johnston, Esq. Governor.

CHAP. 37.

An Act to ascertain what Attornies' fees shall be taxed and allowed, in any suit or action brought in any of the courts of record in this province. The other part of this act provided for by subsequent acts.

1. *And be it further enacted by the authority aforesaid,* That if any practising attorney in any court of record in this province, shall neglect to perform his duty in any action in which he shall be retained, or commit any fraudulent practice, such attorney shall be liable to an action on the case, at common law, in the general or county court of this province, to the party injured; and on the verdict passing against him, judgment shall be given, by the said court, for the plaintiff, to recover double damages, with costs of suit. Attornies neglecting their duty, or committing fraudulent practices, liable to double damages.

SIGNED BY

GABRIEL JOHNSTON, *Esq. Governor.*
NATHANIEL RICE, *President.*
SAMUEL SWANN, *Speaker.*

ANNO REGNI GEORGHII II.

DECIMO NONO.

At a General Assembly, held at Newbern, the twentieth day of April, in the year of our Lord one thousand seven hundred and forty-five. Gabriel Johnston, Esq. Governor.

CHAP. 38.

An additional Act to an Act, entitled, An Act to prevent killing deer at unseasonable times, and for putting a stop to many abuses committed by white persons, under pretence of hunting. See 1738, c. 22. 1768, c. 88.

1. **WHEREAS** by the before recited act, it is, among other things, enacted, That it shall not be lawful for any person to kill or destroy any deer, running wild in the

woods or unfenced grounds in this government, by guns, or any other ways or means whatsoever, between the fifteenth day of February, and the fifteenth day of July, yearly, and in each year, after the ratification of the said act; and that any person convicted of the same, shall forfeit and pay the sum of five pounds, current money: and whereas it appears, that the allowing liberty of killing deer in fenced grounds and inclosures at such seasons, has given room to several persons to evade the said law:

Penalty on persons killing deer contrary to this act.

2. We therefore pray that it may be enacted, *And be it enacted by his excellency GABRIEL JOHNSTON, esquire, governor, by and with the advice and consent of his majesty's council, and General Assembly of this province, and it is hereby enacted by the authority of the same,* That if any person shall be convicted of killing deer, or having venison, or a green deer skin or skins, in his house, camp, or possession, between the fifteenth day of February, and fifteenth day of July, yearly, after the ratification of this act, he shall forfeit and pay the sum of forty shillings, proclamation money; to be recovered and applied as herein after is directed.

Proviso.

3. *Provided nevertheless,* That nothing in this act shall be construed, to extend to convict any person or persons of the said forfeiture, in whose house any venison, green skin or skins, shall be found, which hath been left in such house without the knowledge, privity, or consent of such person, or any of his family, upon due proof thereof to be made, by the person therewith charged.

Fines how to be recovered, and applied.

4. *And be it further enacted by the authority aforesaid,* That all fines and forfeitures mentioned in this act, shall be paid, the one half to the informer, the other half to the churchwardens, for the use of the parish (a) wherein such offence shall be committed; to be recovered, with costs, by a warrant from any justice of the peace within this government; saving to all free persons the right of appeal to the county court where such offence is committed: which said court is hereby empowered and directed, in a summary way, finally to determine the same; wherein no essoin, protection, or wager of law, shall be allowed or admitted of.

a [County, 1777, c. 115, s. 83.]

Right of appeal.

CHAP. 39.

An act to add that part of the province called Mattamuskeet, and Lake, to Hyde county.

1. We pray that it may be enacted, *And it is hereby enacted by his excellency GABRIEL JOHNSTON, Esq. Governor, by and with the advice and consent of his majesty's council, and the General Assembly of this province, and by the authority of the same,* That Mattamuskeet, and the lake thereunto belonging, shall, from henceforward, be accounted, taken, reckoned, and deemed part of Hyde county: and that the inhabitants thereof shall be subject and liable to the same orders, rules and taxes, as any other of the inhabitants of the said county are, or hereafter shall be; any law, custom or usage to the contrary notwithstanding.

Mattamuskeet
deemed part of
Hyde county.

SIGNED BY

GABRIEL JOHNSTON, *Esq. Governor,*
NATHANIEL RICE, *President.*
SAMUEL SWANN, *Speaker.*

ANNO REGNI GEORGII II.

VICESSIMO.

At a General Assembly, held at Newbern, the twenty-eighth day of June, in the year of our Lord one thousand seven hundred and forty-six.

Gabriel Johnston, Esq. Governor.

CHAP. 40.

An act for erecting the upper part of Craven county into a county and parish, and for appointing a place for building a court-house, prison and stocks, in the said county.

1. WE pray that it may be enacted, *And be it enacted by his excellency GABRIEL JOHNSTON, Esq. Governor, by and with the advice and consent of his majesty's council, and General Assembly of this province, and it is hereby enacted by the authority of the same,* That Craven county be divided by a line, beginning at the mouth of the southwest creek, on the south side of Neus river, below Francis Stringer's Ferry, running up the said creek as far as the aforesaid county extends that way, and running a north line from the mouth of the said southwest creek, as far as the county extends northwardly; and that the

Craven county
divided, and
Johnston county
erected.

upper part of the said county be erected into a county by the name of Johnston county, and St. Patrick's parish, as divided by a line that shall be agreed on by the commissioners hereafter named: And that the said county and parish shall enjoy all the privileges and advantages that any other county and parish in this province holds or enjoys; save only that the said county shall send but two representatives to sit in the General Assembly.

CHAP. 41.

An act for dividing Edgcomb county and parish, and for erecting the upper part thereof into a county and parish, by the name of Granville county, and St. John's Parish; and for appointing vestrymen of the said parish.

County divided, and the upper part erected into a distinct county & parish, by the name of Granville.

1. We pray that it may be enacted, *And be it enacted by his excellency GABRIEL JOHNSTON, Esq. Governor, by and with the advice and consent of his majesty's council, and General Assembly of this province, and by the authority of the same,* That Edgcomb county and parish be divided by a line, beginning at the mouth of Stonehouse creek, on Roanoak river, to the mouth of Cypress swamp, on Tar river, and from thence across the river, in a direct course, to the Middle Grounds between Tar river and Neus river, being the dividing line between Craven and Edgcomb counties; and that the upper part of the said county and parish, as divided by the line that shall be agreed on by the commissioners hereafter named, be erected into a county, by the name of Granville county and St. John's parish: And that the said county and parish shall enjoy as many privileges as any other county or parish in this province holds and enjoys, save only that the said county shall send but two representatives to sit in General Assembly.

SIGNED BY

GABRIEL JOHNSTON, *Esq. Governor.*
NATHANIEL RICE, *President.*
SAMUEL SWANN, *Speaker.*

ANNO REGNI GEORGII II.

VICESSIMO SECUNDO.

At a General Assembly, held at Newbern, the sixth day of April, in the year of our Lord one thousand seven hundred and forty-eight.

Gabriel Johnston, Esq. Governor.

CHAP. 42.

An act to appoint commissioners to continue running the boundary line between Edgcomb county, Tyrrel and part of Beaufort counties.

See 1741, c. 27.

1. Whereas the commissioners, appointed by an act, entitled, An act for ascertaining the boundary line between Tyrrel county and Beaufort county, and between Edgcomb county, and Tyrrel county, and Beaufort county, have run a dividing line between Edgcomb county, and Tyrrel county, and part of Beaufort county, and Edgcomb county, from Roanoak river, as far as the mouth of Cheek's mill creek, on Tar river, in Beaufort county; and whereas the tax laid and collected in the said several counties, for defraying the charge of running the said boundary lines, is found insufficient for carrying on the same:

2. We therefore pray it may be enacted, *And be it enacted, by his excellency GABRIEL JOHNSTON, Esq. Governor, by and with the advice and consent of his majesty's council, and General Assembly of this province, and it is hereby enacted by the authority of the same.* That Mr. Joseph Howel and Mr. Joseph Lane, be and are hereby appointed commissioners, for finishing the said line between part of Edgcomb, Beaufort, and Johnston counties, already begun and carried on, to the mouth of Cheek's mill creek, in Beaufort county, on Tar river, and from thence shall run, with a strait line to Contentnee, at the mouth of Tosneat swamp, and thence up the main stream of Contentnee, opposite to the mouth of Cypress swamp, on Tar river; which said line, when run by the commissioners aforesaid, shall be by them entered on record, in the court of Edgcomb county aforesaid, and shall hereafter be deemed and taken to be the true bounds of the said county.

Commissioners appointed.

SIGNED BY

GABRIEL JOHNSTON, Esq. Governor.

NATHANIEL RICE, President.

SAMUEL SWANN, Speaker.

ANNO REGNI GEORGII II.

VICESSIMO SECUNDO.

Gabriel Johnston, Esq. Governor.

At a General Assembly, held at Newbern, the fifteenth day of October, in the year of our Lord one thousand seven hundred and forty-eight.

CHAP. 48.

See private acts
Nov. 1766, c.
29, & post 1778,
c. 136—1780, c.
163—1802, c.
607

An Act for ascertaining the bounds of a certain tract of land formerly laid out by treaty to the use of the Tuskerora Indians, so long as they, or any of them, shall occupy and live upon the same; and to prevent any person or persons taking up lands, or settling within the said bounds, by pretence of any purchase or purchases made, or that shall be made, from the said Indians.

1. WHEREAS complaints are made by the Tuskerora Indians, of divers incroachments made by the English on their lands, and it being but just that the ancient inhabitants of this province shall have and enjoy a quiet and convenient dwelling-place in this their native country: wherefore,

Bounds of the
Indians' lands
confirmed.

2. We pray it may be enacted, *And be it enacted by his excellency GABRIEL JOHNSTON, Esquire, Governor, by and with the advice and consent of his majesty's council, and General Assembly of this province, and it is hereby enacted by the authority of the same, That the lands formerly allotted the Taskerora Indians, by solemn treaty, lying on Morattoek river, in Bertie county, being the same whereon they now dwell, butted and bounded as follows, viz. beginning at the mouth of Quitsnoy swamp, running up the said swamp four hundred and thirty pole, to a scrubby oak, near the head of the said swamp, by a great spring; then north ten degrees east, eight hundred and fifty pole, to a persimon tree on Raquis swamp; then along the swamp and pocosin main course, north fifty-seven degrees west, two thousand six hundred and forty pole, to a hickory on the east side of the Falling run or Deep creek, and down the various courses of the said run to Morattoek river; then down the river to the first station; shall be confirmed and assured, and by virtue of this act, is confirmed and assured, unto James Blount, chief of the Tuskerora nation, and the people under his charge, their heirs and successors, forever; any law, usage, custom, or grant, to the contrary, notwithstanding.*

3. *Provided always*, That it shall and may be lawful for any person or persons, that have formerly obtained any grant or grants, under the late lords proprietors, for any tracts or parcels of land within the aforesaid boundaries, upon the said Indians deserting or leaving the said lands, to enter, occupy, and enjoy the same, according to the tenor of their several grants; any thing herein to the contrary notwithstanding.

Persons having grants, to enter, on desertion of the Indians.

4. *And be it further enacted by the authority aforesaid*, That it shall not nor may be lawful, for the lord Granville's receiver to ask, have, or demand, any quit-rents for any of the said tracts or parcels of land, taken up within the said Indian boundaries, as aforesaid, until such time the Indians have deserted the same, and the patentee be in possession thereof; and then only for such rents as shall from thence arise and become due; any law, usage, or custom, to the contrary, notwithstanding.

Indians not to pay quit-rents.

5. *And be it further enacted by the authority aforesaid*, That no person, for any consideration whatsoever, shall purchase or buy any tract or parcel of land, claimed, or in possession of any Indian or Indians, but all such bargains and sale shall be, and are hereby declared to be null and void, and of none effect; and the person so purchasing or buying any land of any Indian or Indians, shall further forfeit the sum of ten pounds, proclamation money, for every hundred acres by him purchased and bought; one half to the use of the public, the other half to him or them that shall sue for the same; to be recovered, by action of debt, bill, plaint, or information, in any court of record within this government, wherein no essoin, protection, injunction, or wager of law, shall be allowed or admitted of.

Penalty on persons purchasing lands of the Indians.

6. *And be it further enacted by the authority aforesaid*, That all and every person and persons, other than the said Indians who are now dwelling on any of the land within the bounds above mentioned to have been allotted, laid out, and prescribed to the said Tuskerora Indians, shall, on or before the twenty-fifth day of March, next ensuing the ratification of this act, remove him or herself and family off the said land, under the penalty of twenty pounds, proclamation money: and if any person or persons, other than the said Indians, shall neglect or refuse to move him or herself and family, off the said lands, on or before the said twenty-fifth day of March next; and if any person or persons, other than the said Indians,

Persons settled on the Indians' lands, to remove, and no other to settle there, &c. under a penalty.

shall hereafter presume to settle, inhabit, or occupy any of the said lands hereby allotted and assigned for the said Tuskerora Indians; such person or persons shall forfeit the further penalty of twenty shillings, proclamation money, for each and every day he, she, or they shall inhabit or occupy any lands within the said Indian bounds, after the said twenty-fifth day of March next; the said penalties to be recovered and applied in the same manner as the penalty in this act above mentioned.

Surveyor's fee,
for laying out
the Indians'
lands.

7. And whereas the said lands belonging to the Tuskerora Indians, have been lately laid out and new marked, by George Goulde, esq. surveyor-general, at the request of the said Indians; Therefore, *Be it enacted*, That the said George Goulde, esq. have and receive, for the trouble and expense he hath been at in laying out and marking the Indians land aforesaid, the sum of twenty-five pounds, proclamation money; to be paid by the public out of the monies in the public treasury.

Penalty on persons ranging
stocks on the In-
dians' lands.

8. And whereas the Indians complain of injuries received from people driving stocks of horses, cattle and hogs, to range on their lands; for remedy whereof, *Be it enacted*, That persons driving stocks to range, or stocks actually ranging on the Indians' lands, shall, and are hereby declared, to be liable and subject to the like penalties and forfeitures, and may be proceeded against in the same manner, and subject to the same recoveries, as by the law of this province stocks driven or ranging upon any white peoples' land are liable and subject to; and the said Indians shall and may enjoy the benefit of the laws in that case made and provided, in the same manner as the white people do or can; any law, usage, or custom, to the contrary, notwithstanding.

CHAP. 44.

An act for forming a rent-roll of all the lands holden in this province, for quieting the inhabitants in their possessions, and for directing the payment of quit-rents. (a)

See 1741, c. 34,
& 1756, c. 58.

Lands holden in
this province to
be registered
within 12
months, &c.

1. *Be it enacted by his excellency GABRIEL JOHNSTON, Esquire, Governor, by and with the advice and consent of his majesty's council, and the General Assembly of this province, and it is hereby enacted by the authority of the same.* That all persons seized or possessed of any lands in this province, by any title or claim whatsoever, under

(a) This Act is said, in Davis's edition, to have been repealed; but as I have no other authority for that assertion, I have thought it proper to retain it.—*Iredell*.

the late lords proprietors, shall, within twelve months after this act shall be published, in the manner as is hereinafter mentioned, register, or tender to be registered or entered, their patent, grant or mesne conveyance, by which they claim, if in his majesty's part of the province, in the office of the auditor general or his deputy, if such lands are not already entered in the said office, for which no fee or reward shall be taken, or with the clerk of the county court where such lands may lie, who shall take and receive the sum of sixteen pence, proclamation money, for each patent, grant or mesne conveyance, or the abstract thereof; which abstract shall contain the buttings or boundings, or descriptions of the said lands so registered or entered; and shall likewise transmit an exact copy of the same patent, grant or mesne conveyance, or the abstract thereof, so registered, to the office of the auditor-general, or his deputy, on or before the first day of January, in the year of our Lord one thousand seven hundred and forty-nine, under the penalty of five pounds, proclamation money; to be recovered by action of debt in any of his majesty's courts of record within this province, by any person whatsoever that will sue for the same.

2. *And be it further enacted by the authority aforesaid,* That all persons seized or possessed of any lands within that part of the province granted by his majesty, the seventeenth day of September, in the eighteenth year of his reign, in the year of our Lord one thousand seven hundred and forty-four, unto the right honourable John earl Granville, by the name, style and title of the honourable John lord Carteret, shall, within twelve months after this act shall be published, in the manner as is hereinafter mentioned, enter, or tender to be entered, their patent, grant or mesne conveyance, by which they claim any such lands, in the office of the right honourable the earl Granville, at Edenton, or at the county court-house where the land lieth, with such person as shall be appointed by the said earl's agent or agents, who shall enter the same, or an abstract thereof, for which no fee or reward shall be paid; which abstract shall contain the buttings and boundings, and descriptions of the said lands.

Earl Granville's lands to be registered likewise within 12 months.

3. *And be it further enacted by the authority aforesaid,* That all patents, grants or mesne conveyances of lands, claimed under the lords proprietors, which shall not be entered, or tendered to be entered, as aforesaid, either

Patents, &c. not entered in the auditor's or earl's offices, declared void.

Lands of orphans, &c. excepted.

Public register to transmit a list of all lands conveyed, to the auditor, &c. yearly, on penalty of 5*l*.

See 1749, c. 45.

[Obsolete.]

Secretary to transmit, yearly, copies of all wills, under the like penalty.

in the auditor's office, or the office of the earl Granville, shall be deemed and taken to be null and void, and all the lands thereby granted, to be vacant lands, and shall and may be granted by his majesty, his heirs and successors, or by the earl Granville, his heirs or assigns, to any person whatsoever; excepting the lands of orphans or minors, who shall be allowed twelve months, after they arrive at age, to enter the same in the auditor's office, or the office of the earl Granville; except also all persons now absent in parts beyond the seas, who shall be allowed five years for entering such titles, in case they continue so long absent, but if they arrive sooner, then only eight months after their arrival.

4. And for the better ascertaining a yearly rent-roll to his majesty, and earl Granville, and for the securing the quit-rents for such lands as shall hereafter be transferred from one person to another, by mesne conveyance or will; *Be it further enacted by the authority aforesaid,* That the public register in each and every county within this province, shall, on or before the first day of February, yearly, and every year, transmit to the office of his majesty's auditor general, or his deputy, or to the agents of the lord Granville, if the lands lie in that part of the province granted to the said lord by his majesty, a true and exact list of all the lands so conveyed within such county for which he is register, containing the parties' names, the number of acres, situation of such lands, and the date of such conveyance, under the penalty of five pounds, proclamation money, for each neglect; to be recovered, by action of debt, bill, plaint, or information, in any of his majesty's courts of record within this province, wherein no essoin, protection, injunction, or wager of law, shall be allowed or admitted of, by any person who shall sue for the same; for which such register shall take and receive of the party registering, eight pence, proclamation money, for each deed or mesne conveyance: And that the secretary, for the time being, or his deputy, do, in like manner, on or before the first day of February, yearly, and every year, transmit to the office of his majesty's auditor-general, or his deputy, or to the agents of the lord Granville, if the lands lie in that part of the province granted to the said lord by his majesty, a true and exact list of all the lands bequeathed by will, recorded in the secretary's office, containing the date of the will, the name or names of the legatees, the number of

acres, and the counties where such lands lie, under the like penalty ; to be recovered as aforesaid : for which the said secretary, or his deputy, shall take and receive, of the parties lodging such wills in the secretary's office, eight pence, proclamation money, for each will.

5. And whereas several persons have been many years in quiet possession of lands in this province, and have, by fire, or otherwise, lost their patents, grants, or mesne conveyances of their lands ; *Be it enacted by the authority aforesaid,* That all persons that have, or those under whom they claim, have been in actual and quiet possession of any tract or tracts of land, for the space of twenty years, next before the ratification of this act, and shall make proof thereof before the governor and council, or general court, or the court of the county where the land lieth, and shall enter such proof in the auditor's office, or office of the earl Granville, in case the land shall lie within his territory or district ; that then, and from thenceforth, such persons, their heirs and assigns, shall quietly hold and enjoy such tract or tracts of land, against his majesty, his heirs and successors, or against the said earl Granville, his heirs and assigns, he or they paying the highest quit-rents that were actually reserved and made payable to the late lords proprietors, in the respective counties where such lands lie.

20 years quiet possession deemed a good title to lands, under certain circumstances,

6. *And be it further enacted by the authority aforesaid,* That the record of every patent or grant registered in the secretary's office, or the abstracts of them, entered in the auditor's office, or the office of the earl Granville, or exemplifications of them, duly proved, shall be as good and valid in law, as if the originals were produced, and may be pleaded and given in evidence as well as if the originals were in being.

Record of patent to be good in law.

7. *And be it further enacted by the authority aforesaid,* That the secretary shall make out, and send to the clerk of the court of every county in this province, a copy of this act, within three months next after the ratification hereof, under the penalty of twenty pounds, proclamation money ; and the clerk of every county court shall, the first court after the receipt of such copy, publish the same, by publicly reading thereof, in open court, the second day of the sitting of the said court, under the penalty of twenty pounds, proclamation money ; the said

Secretary to send a copy of this act to the several counties.

[Obsolete.]

penalties to be recovered, by action of debt, bill, plaint or information, in any court of record in this province, by him or them that will sue for the same.

SIGNED BY

GABRIEL JOHNSTON, *Esq. Governor.*NATHANIEL RICE, *President.*SAMUEL SWANN, *Speaker.*

ANNO REGNI GEORGII II.

VICESSIMO SECUNDO.

Gabriel Johnston, Esq. governor.

At a General Assembly, held at Newbern, the fourteenth day of April, in the year of our Lord one thousand seven hundred and forty-nine.

CHAP. 45.

See 1748, c. 44.

An additional Act to an Act, entitled, An Act for forming a rent-roll of all the lands holden in this province, for quieting the inhabitants in their possessions, and for directing the payment of quit-rents.

Auditor to transmit, every six months, to the receiver-general, extracts of conveyances, &c. on penalty of 2s. 6d. for every neglect.

1. In order to prevent any mistakes that may arise, by the receiver-general, or the earl Granville's collector or receiver, their not knowing what lands are transferred from one person to another within this province, either by will, mesne conveyance, or other transfer; *Be it enacted by the authority aforesaid*, That the deputy-auditor for the time being, shall, every six months, transmit to the receiver-general for the time being, the same extracts of all such legacies, mesne conveyances, or other transfers of land from one person to another, as he shall, from time to time, receive from the secretary of this province, or from the registers of each county respectively, under the penalty of two shillings and six pence, proclamation money, for each extract he shall neglect so to transmit; to be recovered as other penalties are directed to be recovered by the afore-recited act; the said extracts to contain the names of all the parties, the number of acres of land, where situated, and at what quit-rents the said lands are held.

Persons to whom lands are devised, chargeable with the quit-rents.

2. *And be it further enacted*, That after the register or secretary shall, as before mentioned, transmit such list, as aforesaid, the person to whom such mesne con-

veyance is made, or to whom any such lands shall be devised by will, shall (all arrears of quit-rents being first paid) only be chargeable with the quit-rents of such land, and no other person whatsoever: any law, usage, or custom, to the contrary, notwithstanding.

CHAP. 46.

An Act directing the method for cutting or docking intails of small estates.

1. WHEREAS divers persons are seized of small and inconsiderable pieces of land, in tail, often ignorantly, without design, devised, in tail, by their ancestors; and the method of defeating such estates in fee tail, general or special, within this province, by act of general assembly, in such particular case to be made and provided, is found too expensive for poor people, seized of such land, to go through with; and therefore the docking intails by some easier method will be a great relief to such poor people and their families, whereby they would be enabled to purchase other more improvable lands and slaves:—Wherefore,

2. We humbly pray your most sacred majesty that it may be enacted, *And be it enacted by his excellency the Governor, Council, and General Assembly of this province,* That it shall and may be lawful for any person or persons, seized, in fee-tail, general or special, of, or in, any lands or tenements within this province, not exceeding the value of fifty pounds, sterling money, and not being parcel of, or contiguous to, other intailed lands of the same parties, to sue out a writ, from the secretary's office, in the nature of an *ad quod damnum*, directed to the sheriff of the county where such intailed lands lie, commanding him to enquire, by good and lawful men of his county, of the value of such lands, and whether they be parcel of, or contiguous to, other intailed lands of the same party as aforesaid; and such sheriff shall return his inquisition to the said office: and if the said lands shall be found not to exceed the value aforesaid, and to be a separate parcel as aforesaid, then a deed of bargain and sale, reciting the title and such inquisition, (wherein a valuable consideration shall be expressed, and, *bona fide*, paid) acknowledged by the party, or proved by two witnesses, before the chief justice, or any of the associate

Method of
docking intails.

judges, or in the court of the county where such lands may lie, within six months after the date thereof, and registered, within twelve months, in the county where such lands lie, shall be sufficient in law to pass the fee-simple estate of such lands to the purchaser or purchasers thereof; and the right of the issue of the vender, and all other persons in remainder or reversion, shall be barred, in the same manner as the same estate might be barred by fine and recovery, according to the laws of England.

SIGNED BY

GABRIEL JOHNSTON, *Esq. Governor.*

NATHANIEL RICE, *President.*

SAMUEL SWANN, *Speaker.*

ANNO REGNI GEORGHII II.

VICESIMO TERTIO.

Gabriel Johnston, Esq. governor.

At a General Assembly, held at Newbern, the seventeenth day of March, in the year of our Lord one thousand seven hundred and forty-nine.

CHAP. 47.

An act for erecting the upper part of New-Hanover county into a county and parish, by the name of Duplin county, and St. Gabriel parish; and for appointing a place for building a court-house, prison and stocks in the said county.

Division of the county.

1. We pray that it may be enacted, *And be it enacted by his excellency GABRIEL JOHNSTON, Esquire, Governor, by and with the advice and consent of his majesty's council, and the General Assembly of this province, and by the authority of the same,* That New-Hanover county be divided by a line, beginning at the mouth of Rockfish creek, on the Northeast river of Cape Fear, running east to Onslow county, and westward, by a strait line, from the mouth of the said creek, to the upper forks of Black river, where Cohecry and the Six-Runs meet, thence up Cohecry to the head thereof; and that the upper part of the said county be erected into a county, by the name of Duplin county, and St. Gabriel parish: And that the said county and parish shall enjoy all the privileges and advantages that any other county and parish in this province now holds or enjoys,

Duplin county erected.

CHAP. 48.

an act for erecting the upper part of Bladen county into a county and parish, by the name of Anson county, and St. George's parish; and for appointing a place for building a court-house, prison, and stocks, in the said county.

1. WE pray that it may be enacted, *And be it enacted by his excellency GABRIEL JOHNSTON, Esquire, Governor, by and with the advice and consent of his majesty's council, and the General Assembly of this province, and by the authority of the same.* That Bladen county be divided by a line, beginning, at the place where the south line of this province crosseth the westernmost branch of Little Pee-Dee river, then by a strait line to a place where the commissioners for running the southern boundary of this province crossed that branch of Little Pee-Dee river, called Drowning creek, thence up that branch to the head thereof; then by a line, to run, as near as may be, equi-distant, from Saxpahaw river, and Great Pee-Dee river; and that the upper part of the said county and parish so laid off and divided, be erected into a county and parish, by the name of Anson county, and St. George's parish, and that all the inhabitants to the westward of the afore-mentioned dividing line, shall belong and appertain to Anson county: And that the said county and parish shall enjoy all and every the privileges, which any other county or parish in this province holds or enjoys.

Division of the county.

Anson county erected.

CHAP. 49.

An act to enable the justices of the several counties to provide certain law books, for the use of their county courts.

1. BE it enacted by his excellency GABRIEL JOHNSTON, Esquire, Governor, by and with the advice and consent of his majesty's council, and General Assembly of this province, That the justices of each county court within this province, shall and may have full power and authority, in some convenient time, according to their discretion, to purchase and provide the latest editions of the law books following, to wit: Nelson's Justice, Cary's Abridgment of the Statutes, Swinburn of Wills, or Godolphin's Orphan's Legacy, and Jacob's Law Dictionary, or Wood's Institutes: Which books, when provided, shall be, forever after, for the use of the county court, and

Justices empowered to purchase law books.

shall be kept in the offices of the several clerks, and constantly, during the sitting of every county court, laid by the clerk of each court, on the court table, for the use and perusal of the justices of such court, and of all such as may have any matters depending in court.

Penalty on the clerk for destroying such books, &c.

2. *And be it further enacted by the authority aforesaid,* That if any county court clerk shall abuse or destroy, or suffer to be abused or destroyed, any of the books so committed to his care, he shall be fined, at the discretion of the court, for such his neglect : which fine shall be applied towards repairing the loss or damage of such books, occasioned by such neglect.

Tax to be laid for purchasing books.

3. *And be it further enacted by the authority aforesaid,* That the justices in the several county courts shall have full power to lay such an additional tax on their respective counties as shall be sufficient to purchase and provide the books aforesaid ; and shall apply the same accordingly.

SIGNED BY

GABRIEL JOHNSTON, *Esq. Governor.*
NATHANIEL RICE, *President.*
SAMUEL SWANN, *Speaker.*

ANNO REGNI GEORGH II.

VICESIMO QUINTO.

Gabriel Johnston, Esq. governor.

At a general assembly, begun and held at Newbern, the twelfth day of June, in the nineteenth year of his majesty's reign, and from thence continued, by several prorogations, to the twenty-seventh day of September, in the year of our lord one thousand seven hundred and fifty-one.

CHAP. 50.

An additional Act to an Act, entitled, *Feme Coverts how to pass lands.*

See 1713, c. 3
—1796, c. 510—
1811, c. 791, s. 1
—1816, c.
927.

1. **WHEREAS** the method prescribed for feme coverts to convey their estates in lands in this province, by an act of assembly, made at a general biennial assembly, held on the seventeenth day of November, in the year of our Lord one thousand seven hundred and fifteen, entitled, *Feme Coverts how to pass lands*, in many cases, hath been found by experience, to be impracticable ; by reason that the right of inheritance of many lands in this province is in feme coverts who are residents of neighbor-

ing governments ; and in such cases, conveyances have been made by the husband, with the wife's consent, and some times by both, and at other times by the wife only, and afterwards ratified and confirmed by the husband ; by means whereof the titles of many persons are become precarious and doubtful, and much land lies uncultivated ; to the great diminution of the revenue of the crown :

2. *Be it enacted by his excellency GABRIEL JOHNSTON, Esq. Governor, by and with the advice and consent of his majesty's council, and the General Assembly of this province, and it is hereby enacted by the authority of the same,* That from and after the passing of this act, all conveyances in writing, and sealed by husband and wife, for any lands, and by them personally acknowledged before the chief justice, (a) or in the court of the county where the land lieth, the wife being first privily examined before the chief justice, or some member of the county court, appointed by the said court for that purpose, whether she doth voluntarily assent thereto, and registered according to the directions of the laws of this province, shall be as valid in law to convey all the estate and title which such wife may or shall have in any lands, tenements or hereditaments so conveyed, whether in fee simple, right of dower, or other estate, not being fee tail, as if done by fine and recovery, or any other ways and means whatsoever.

3. *Provided nevertheless,* That where any such conveyances as aforesaid shall be acknowledged by the husband, or proved by the oath of one or more witnesses, before the chief justice or county court where the land lieth, and it shall be represented to the chief justice or county court aforesaid, that the wife is a resident of any other country, or so aged or infirm that she cannot travel to the chief justice or county court, to make such acknowledgement as aforesaid ; it shall and may be lawful for the chief justice or county court, by his or their order, to direct the clerk of the county court where such land lieth, to issue a commission to two or more commissioners, for receiving the acknowledgement of any deed of such feme covert, for passing her estate in any lands, tenements, or hereditaments ; and such deed, acknowledged before them, after they have examined her privily and apart from her husband touching her consent, and certified by the county court to which the commission shall be returnable, shall, by order of the county court, be registered,

Feme coverts
how to pass
lands.

a [The judges
of the superior
courts have the
same power,
1777, c. 115, s.
2—also the
judges of the su-
preme court,
1818, c. 963, s.
2.]

Proceedings to
be had where
the wife is an
inhabitant of
another coun-
try, &c.

with the commission and return, and shall be as effectual as if personally acknowledged before the chief justice or county court by such feme covert.

4. And for preventing mistakes in issuing out such commissions, *Be it enacted by the authority aforesaid,* That the several clerks of this province, shall issue the same, in the form following, to wit,

NORTH-CAROLINA, C. COUNTY, ss.

GEORGE the second, by the grace of God, of Great-Britain, France, and Ireland, king, defender of the faith, &c.

To A. B. C. D. and E. Gentlemen, GREETING.

WHEREAS F. G. hath produced a deed of conveyance, made to him from H. I. and K. his wife, of a certain tract or parcel of land, lying and being in the county of _____ in our province of North-Carolina, and procured the same to be proved or acknowledged by the said H. I. before I. K. (a) our chief justice of our said province, (or in the court of our said county of C. as the case may be,) and it being represented to our said chief justice, or to our said court, that K. wife of the said H. I. is an inhabitant of our said province, or of _____ or is so aged and infirm, (here as the case may be) so that she cannot travel to our said chief justice, or court of our said county of _____ to be privily examined as to her free consent in executing the said conveyance. Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give unto you, or unto any two of you, full power and authority, to take the private examination of the said K. wife of the said H. I. concerning her free consent in her executing the said conveyance: and therefore we command you, or any two of you, that at such certain day and place as you shall think fit, you go to the said K. if she cannot conveniently come to you, and privily, and apart from her husband, examine her the said K. whether she executed the said conveyance freely and of her own accord, without fear or compulsion of the said H. I. her husband; and the examination being distinctly and plainly wrote on the said deed, or on some paper annexed thereto, and when you shall have so taken the said examination, you are to send the same, closed up, under the seals of you, or any two of you, together with this writ, unto our said court, to be held for the said county of C. on the _____ day

Form of a commission for the private examination of a feme covert.

a [One of the judges of the superior courts (or of the supreme court) of the said state—
1777, c. 115, s. 2, & 1818, c. 963, s. 2.]

of next ensuing, in the year of our
 reign. Witness L. M. clerk of our said court, at
 the day of Anno Domini. 17
 L. M. Cl. C.

5. And for the greater security of purchasers, *Be it enacted by the authority aforesaid*, That all deeds and conveyances of lands, heretofore made by the husband and wife, or by the wife, and afterwards ratified and confirmed by the husband, wherein a valuable consideration is expressed, for any estate or title of any feme covert, in any lands, tenements, or hereditaments, whether in fee-simple, right of dower, or other estate, not being fee-tail, where such deeds or conveyances have been registered, within twelve months from the date thereof, or shall be registered within the space of one year after the return of the commission for taking the examination of the wife, as herein before mentioned, or where the person or persons to whom the same hath been made, hath actually entered thereupon, and hath continued in possession thereof for the space of seven years, by virtue of such deeds; they shall be respectively as valid in law, and take effect as fully, to the benefit of all persons respectively in possession thereby, and their heirs and assigns, against the husband and wife, and every of their heirs and assigns, and against all other persons claiming by, from, or under them, or any of them, as if the same had been done by fine and recovery, or any other ways or means whatsoever; any law, custom, or usage, to the contrary in any wise, notwithstanding.

Former pur-
 chasers secur-
 ed, &c.

SIGNED BY

GABRIEL JOHNSTON, *Esq. Governor.*

MATTHEW ROWAN, *President.*

SAMUEL SWANN, *Speaker.*

ANNO REGNI GEORGII II.

VICESSIMO QUINTO.

Gabriel Johnston, Esq. governor.

At a General Assembly, held at Bath-Town, the thirty-first day of March, in the year of our Lord one thousand seven hundred and fifty-two.

CHAP. 51.

An act for dividing part of Granville, Johnston and Bladen counties, into a county and parish, by the name of Orange county, and the parish of St. Matthew; and for appointing vestrymen for the said parish, and other purposes therein mentioned.

Orange county erected.

1. We pray that it may be enacted, *And be it enacted by his excellency GABRIEL JOHNSTON, Esq. Governor, by and with the advice and consent of his majesty's council, and General Assembly of this province, and it is hereby enacted by the authority of the same,* That the upper part of Granville, Johnston and Bladen counties, be erected into a county and parish, by the name of Orange county, and the parish of St. Matthew: and be divided by a line, beginning on the nearest part on the Virginia line to Hico creek, thence a direct line to the Bent of Eno river, below the Occaneechas, near to the plantation where John Williams now dwelleth; thence down the south side of Eno river, to Neuse river; thence down Neuse river, to the mouth of Horse creek; thence a direct line to the place where earl Granville's line crosses Cape-Fear river; thence along the said line to the eastern bounds of Anson county; thence along the dividing line of Anson county, to the end thereof; and that the upper parts of the said counties be divided and run accordingly, by the commissioners herein after appointed: And that the said county and parish shall enjoy all and every the privileges which any other county or parish in this province holds or enjoys.

See 1753, c. 55.

SIGNED BY

GABRIEL JOHNSTON, *Esq. Governor.*

MATTHEW ROWAN, *President.*

SAMUEL SWANN, *Speaker.*

ANNO REGNI GEORGI. II

VICESSIMO SEXTO.

At a General Assembly, begun and held at Newbern, the twenty-seventh day of March, in the year of our Lord one thousand seven hundred and fifty-three. Matthew Rowan, Esq. president.

CHAP. 52.

An act to relieve such persons that have, or may suffer, by the loss of the records in Onslow county.

1. WHEREAS by a violent storm or whirlwind, in September last past, the house of Mr. Thomas Black, late clerk of the court for the county of Onslow, together with the court-house, and most of the records belonging to the county court, were blown away and destroyed, whereby the estates of many orphans and other persons may be very much perplexed and prejudiced: For remedy whereof,

2. *Be it enacted by the honourable MATTHEW ROWAN, Esquire, President, by and with the advice and consent of his majesty's council, and the General Assembly of this province, and by the authority of the same,* That from and after the passing of this act, the copy of any judgment, order, settlement of orphans and their estates, or other record of any matter or thing transacted or done in the county court of Onslow, attested under the hand of the clerk who recorded the same (in such cases where the original is lost or destroyed,) shall and may be given in evidence in any dispute or controversy, or in any court whatsoever, and shall have the same weight and credit given to it as the original record might, or ought to have, could it have been produced.

Copy of records to be given in evidence.

3. *And be it further enacted by the authority aforesaid,* That where persons have neglected taking copies from the clerk's office, or may have lost them, and are desirous to perpetuate the memory of such judgments, order, probate of a will or deed, disposal of, or settlement of orphans' estates, or any other matter or thing transacted and done in the said county court, it shall and may be lawful, upon due proof made in open court, to the satis-

Where copies of records are lost, clerk to record, &c. on due proof made to the court.

faction of the justices of such court, at any time within two years next ensuing the passing of this act, to cause the same to be entered on record by the clerk of the court, in a particular book for that purpose, and therein shall recite the witnesses proving the same, and that the original record was lost in the storm; for which service he shall be allowed a sufficient reward, at the discretion of the justices of the county court, to be paid out of the county tax.

Such records
deemed good.

4. *And be it further enacted*, That such record, so made, shall and may, at all times hereafter, be pleaded, and given in evidence, and have the same authority in any cause or court whatsoever, as the original would have, could it have been produced.

Court not held
in Johnston, to
be no error in
proceedings.

5. And whereas since the storm, for want of houses and accommodations, the court could not be held at Johnston; *Be it enacted*, That it shall not be deemed or adjudged error in any proceedings, or other public business, transacted in the said court or county of Onslow, by reason the same hath not been held, or hereafter shall not be held and transacted in the town of Johnston, until a new court-house shall be built for the said county, in the town of Johnston; and that the same shall be built within two years from the passing hereof.

[Obsolete.]

CHAP. 53.

An additional act to an act concerning servants and slaves.

1. **WHEREAS** by an act, entitled, *An act concerning servants and slaves*, among other things, it is provided, that no slave shall go armed with gun, sword, club, or any other weapon, or shall keep any such weapon, or shall hunt or range in the woods with a gun, (a) upon any pretence whatsoever, except such slave or slaves who shall have a certificate, as in the said act is provided; and whereas the remedy in the said act provided has proved ineffectual to restrain many slaves in divers parts of this province from going armed, which may prove of dangerous consequence: For remedy whereof,

[See 1729, c.
19, s. 7—1741,
c. 35, s. 35, 36,
37.]

Slaves not to
have liberty to
hunt with a gun,
unless their
owners, &c.

2. We pray it may be enacted, *And be it enacted by the honourable MATTHEW ROWAN, Esquire, President, by and with the advice and consent of his majesty's council, and the General Assembly of this province*, That from and

after the passing of this act, no certificate shall be signed by any chairman of any county court in this province, allowing any slave to carry a gun and hunt in the woods, unless the master, mistress, or manager of such slave, shall first enter into bond, with sufficient security, to the county court, either before, or at the time such certificate shall be given, for the good and honest behaviour of such slave; which bond may be assigned over to any person or persons who shall be injured by such slave; which assignee shall and may maintain an action thereon, and recover such damages as he or she shall or may sustain by such slave, in any court of record in this province, by action of debt, bill, plaint, or information; wherein no essoin, injunction, protection, or wager of law, shall be allowed or admitted of.

give bond and security for their behaviour.

Bond may be assigned to the party injured.

3. *And be it further enacted*, That no slave shall have or carry a gun in any plantation where crop is not tended, nor more than one in any plantation where there is crop tended, nor after crop is housed: and the master, mistress, or overseer of any slave, with whom shall be found any gun, sword, or other weapon, contrary to the true intent and meaning of this and the before recited act, shall forfeit and pay, to the person finding the same, the sum of twenty shillings, proclamation money; to be recovered by a warrant before any one justice of the peace for the county where the offence shall be committed, any punishment inflicted on the slave, forfeiture of the gun, sword, or other weapon, notwithstanding; unless such master, mistress, or overseer, shall, by their own oath, or other proof, make appear that such slave carrying a gun, sword, or other weapon, was without their consent or knowledge.

In what cases slaves may carry guns.
1741, c. 35, s. 35, 36, 37

4. *And for the encouragement of such searchers faithfully to execute their office*, *Be it further enacted by the authority aforesaid*, That each and every searcher (a) shall, as to his own person, be, during the time of his continuance in his office, exempted from serving as a constable, or upon the roads, or in the militia, or as a juror, and shall not be obliged to pay any provincial, county, or parish tax, of what kind or nature soever.

Searchers' privileges.

5. *And be it enacted by the authority aforesaid*, That no slave shall hunt or range in the woods with a dog or dogs, (b) except such as shall have a certificate for hunt-

Penalty on slaves hunting with dogs.

a [Patrollers are exempted from serving on juries, working on roads, and from the payment of taxes to the amount of 40s. 1794, c. 406, s. 3.]

b [See 1729, c. 19, s. 7.]

ing, obtained as is in this act directed : and if any slave shall be found offending herein, it shall and may be lawful for any person or persons to kill and destroy the said dog or dogs, and to bring the said slave before the next magistrate, who shall, on due proof of his offence, order the said slave such correction as he shall judge reasonable, not exceeding thirty lashes.

Slaves not fed according to this act, stealing corn, &c. injured person to sue the owner for trespass.

6. *And be it enacted by the authority aforesaid,* That in case any slave or slaves who shall not appear to have been clothed and fed according to the intent and meaning of this act, shall be convicted of stealing any corn, cattle, hogs, or other goods whatsoever, from any person not the owner of such slave or slaves, such injured person shall and may maintain an action of trespass against the master, owner, or possessor of such slave, in the general or county court, and shall recover his or her damages, with costs of suit ; any law, usage, or custom to the contrary, notwithstanding.

CHAP. 54.

An Act for erecting the upper part of Anson county into a county and parish, by the name of Rowan county, and St. Luke's parish ; and for appointing a place for holding a court in the said county.

Rowan county erected.

2. We pray it may be enacted, *And be it enacted by the honourable MATTHEW ROWAN, esquire, president, by and with the advice and consent of his majesty's council, and the General Assembly of this province, and by the authority of the same,* That Anson county be divided by a line, to begin where Anson line was to cross earl Granville's line, and from thence, in a direct line, north, to the Virginia line ; and that the said county be bounded to the north by the Virginia line, and to the south by the southernmost line of earl Granville's land : and that the upper part of the said county, so laid off and divided, be erected into a county and parish, by the name of Rowan county, and St. Luke's parish ; and that all the inhabitants to the westward of the said line, and included within the before mentioned boundaries, shall belong and appertain to Rowan county : and that the said county and parish shall enjoy all and every the privileges, which any other county in this province holds or enjoys.

CHAP. 55.

An Act to amend an act, entitled, an act for dividing part of Granville, Johnson, and Bladen counties, into a county and parish, by the name of Orange county, and the parish of St. Matthew, and for appointing vestrymen for the said parish, and other purposes therein mentioned.

1. WHEREAS it is found to be more convenient to the inhabitants of the said county to have the lines mentioned in the abovesaid act, to run from the nearest part of the Virginia line to Hico creek, in a direct line to the bent of Eno river, below the Occaneechas, and from thence down the Eno river, to Neuse river, and from thence down Neuse river, to the mouth of Horse creek, altered by a line to be run, beginning on the Virginia line, twenty miles west of Granville court-house, running thence a south course to Neuse river, thence bounded by the said river to the mouth of Horse creek; and that the jurors directed by the said act to attend the general court of Newbern, should be returnable, and attend the court of assize, in Edgcomb county: See 1752, c. 51, & 1756, c. 60.

2. We pray that it may be enacted, *And be it enacted by the honourable MATTHEW ROWAN, Esquire, president and commander in chief of this province, by and with the advice and consent of his majesty's council, and the General Assembly of this province, and it is hereby enacted by the authority of the same.* That instead of the lines mentioned in the above recited act, to be run from the nearest part of the Virginia line to Hico creek, in a direct line to the bent of Eno river, below the Occaneechas, and from thence down the Eno river to Neuse river, at the mouth of Horse creek, a line shall be run, beginning on the Virginia line, twenty miles west of Granville court-house, running thence a south line to Neuse river, and thence bounded by the said river to the mouth of Horse creek. Boundary lines of Orange county.

SIGNED BY

MATTHEW ROWAN, *Esq. President.*

JAMES MURRAY, *President of the Council.*

SAMUEL SWANN, *Speaker.*

ANNO REGNI GEORGH II.

VICESSIMO OCTAVO.

Arthur Dobbs,
Esq. governor.

At a general assembly, begun and held at Newbern, on the twelfth day of December, in the year of our lord one thousand seven hundred and fifty-four; being the first session of this Assembly.

CHAP. 56.

An act to prevent malicious maiming and wounding.

Repealed by
1791, c. 339, s.
3.

Maiming or dis-
figuring, &c. de-
clared felony;
but not to cor-
rupt the blood,
&c.

a [The first of-
fence is punish-
able by the pil-
lory, &c. 1791,
c. 339, s. 1.]

1. WHEREAS many mischievous and ill-disposed persons have of late, in a malicious and barbarous manner, maimed, wounded, and defaced, many of his majesty's subjects: For the prevention of which inhuman practices,

2. *Be it enacted by the Governor, Council and Assembly, and by the authority of the same,* That if any person or persons, from and after the ratification of this act, on purpose, shall unlawfully cut out or disable the tongue, put out an eye, slit the nose, bite or cut off a nose or lip, bite or cut off, or disable, any limb or member of any subject of his majesty, in so doing to maim or disfigure, in any of the manners before mentioned, such his majesty's subjects; that then, and in every such case, the person or persons so offending, their counsellors, abettors, and aiders, knowing of, and privy to the offence as aforesaid, shall be, and are hereby declared to be felons, and shall suffer as in case of felony; (*a*) provided that no attainder of such felony shall extend to corrupt the blood, or forfeit the dower of the wife, or the lands, goods, or chattels, of the offender.

SIGNED BY

ARTHUR DOBBS, *Esq. Governor.*

MATTHEW ROWAN, *President.*

JOHN CAMPBELL, *Speaker,*

ANNO REGNI GEORGH II.

TRICESIMO.

At a General Assembly, began and held at Newbern, on the twelfth day of December, in the year of our Lord one thousand seven hundred and fifty-four, and from thence continued, by several prorogations, to the thirtieth day of September, in the year of our Lord one thousand seven hundred and fifty-six: Being the third session of this Assembly.

Arthur Dobbs,
Esq. governor.

CHAP. 57.

An act for ascertaining the method of proving book debts.

1. WHEREAS doubts have arisen upon construction of the law now in force, prescribing the manner of proving book debts: For prevention whereof for the future,

2. *Be it enacted by the Governor, Council and Assembly, and by the authority of the same,* That in any action of debt, or upon the case, which hath been, or shall be brought, where the plaintiff (a) hath declared, or shall declare, upon an *emissit, indebitatus assumpsit, quantum valebant*, or *quantum meruit*, for goods, wares and merchandizes, by him sold and delivered, or for work done and performed, shall file his account with his declaration; and upon the trial of the issue, or executing a writ of enquiry of damages in such action, shall declare upon his corporal oath, or solemn affirmation (as the case may be) that the matter in dispute is a book account, and that he hath no means to prove the delivery of such articles as he shall then propose to prove by his own oath, or any of them, but by his book; and in that case, such book shall and may be given in evidence, if he shall make out, by his own oath or affirmation, that such book doth contain a true account of all the dealings, or the last settlement of accounts between them; and that all the articles therein contained, and by him so proved, were *bona fide* delivered, and that he hath given the defendant all just credits; and such book, and oath or affirmation, shall be admitted and received as good evidence, in any court of law, for the several articles so proved to be delivered within two years before the said action brought, but not

In what cases a book may be evidence; and manner of proceeding to be entitled to it.

a [Executors & administrators may give book accounts in evidence under certain circumstances, by 1796, c. 465.]

for any article of a longer standing : And where the person who delivered such goods, wares, or merchandizes, or performed such work and labor, shall die, his executors or administrators may give his book in evidence, upon his or their making oath or affirmation, that they verily believe the account as there charged is just and true, and that there are no witnesses to his or their knowledge, capable of proving the delivery of the several articles as he shall propose to prove by the said book, and oath or affirmation, and that he found the book so stated, and doth not know of any other or further credit to be given than what is there mentioned ; and such book, and oath or affirmation, shall be admitted and received as evidence for any articles delivered within the time aforesaid.

Copy of an account to be evidence, unless notice shall be given to produce the book.

3. But whereas it may be inconvenient and hazardous, by reason of bad weather and accidents, to carry books of accounts great distances to court, when a copy of the account, proved in the same manner as by this law the book is to be proved, may satisfy the defendant as fully ; *Be it therefore enacted by the authority aforesaid, That a copy from the book of accounts, proved in manner herein before directed, shall and may be given in evidence in any such action as aforesaid, and shall be as available as if such book had been produced, unless the defendant, or his attorney, shall give notice to the plaintiff, or his attorney, at the joining of the issue, that he will require the book to be produced at trial ; and in that case, no such copy shall be admitted or received as evidence.*

Defendant may contest the plaintiff's evidence ; and deceased persons' books to go against each other.

4. *Provided nevertheless, That the defendant shall be at liberty to contest the plaintiff's evidence, and oppose the same by other legal evidence ; and where the defendant shall be an executor or administrator, his testator, or intestate's book, shall and may be given in evidence against the plaintiff's book, where the plaintiff is an executor or administrator, for such articles as shall be proved in manner aforesaid.*

Limitation of time as to the articles to be proved.
See 1715, c. 2, s. 5.

5. *Provided also, That no book of accounts, although the same may be proved by witness or witnesses, shall be admitted or received as evidence in any action for goods, wares or merchandizes delivered, or for work done, above five years before the said action brought ; except in case of persons being out of the government, or where the account shall be settled and signed by the parties.*

Articles of above 30l. not to

6. *Provided nevertheless, That no plaintiff shall be at liberty to prove by his book, and oath or affirmation as*

aforesaid, on the trial of any such action as afore mentioned, any article or articles, the amount whereof shall exceed the sum of thirty pounds. proclamation money.

be proved by book, and oath of the party.

7. And for preventing a multiplicity of law suits, *Be it further enacted by the authority aforesaid*, That in all cases where there are, or shall be, mutual debts subsisting between the plaintiff and defendant, or if either party sue, or be sued, as executor or administrator, where there are mutual debts subsisting between the testator or intestate, and either party, one debt may be set against the other, either by being pleaded in bar, or given in evidence, on the general issue, on notice given of the particular sum intended to be set off, and on what account the same is due, notwithstanding such debts shall or may be deemed in law to be of a different nature; but if either debt arose by reason of a penalty, the sum intended to be set off shall be pleaded in bar, setting forth what is justly due on either side; any law, usage or custom, to the contrary, in any wise, notwithstanding.

Cases in which there may be a set off; and manner of availing of it.

CHAP. 58.

An Act for the relief of such persons as have suffered, or may suffer, by not having their deeds and mesne conveyances proved and registered within the time heretofore appointed for such purposes, and to prevent disputes and law-suits concerning lands.

1. WHEREAS from the difficulty of convening witnesses to deeds and mesne conveyances before the chief justice, or before the court of any county wherein the lands, by the same granted, lie, many of them have not been proved nor registered within the time heretofore appointed by law for that purpose, which may occasion litigious law-suits, and the estates of fair and honest purchasers thereby be drawn in question: for remedy whereof,

See 1748, c. 44. & 1760, c. 67.

2. *Be it enacted by the governor, council, and assembly, and by the authority of the same*, That all deeds and mesne conveyances of lands, tenements, and hereditaments, not already registered, acknowledged, or proved, shall and may, within eighteen months after the passing of this act, be acknowledged by the grantors, their agents or attorneys, or proved by one or more of the subscribing witnesses to the same, and tendered and delivered to the registers of the counties wherein such lands, tenements, and hereditaments, respectively lie; and all deeds and

Further time allowed for proving deeds and conveyances.

mesne conveyances of lands, tenements, and hereditaments, hereafter to be made, shall and may, at any time, within two years from the respective dates thereof, be acknowledged, or proved in manner aforesaid, and delivered to the registers of the counties wherein they are respectively situated.

All such as shall be proved agreeable to this act, & such as have been heretofore recorded, &c. declared good, & copies of the registry may be given in evidence.

3. *And be it further enacted by the authority aforesaid,* That all deeds and mesne conveyances whatsoever, which shall be acknowledged or proved, according to the directions of this act, and also all such as have been heretofore recorded by the clerk, or registered by the register of any precinct or county wherein the lands or tenements mentioned in the same lie, though not within one year after the date of the respective conveyances, shall be good and valid in law, and shall enure and take effect, as fully and effectually, to the use and behoof of the grantees, their heirs and assigns, and those claiming under them, as if such deeds and conveyances were acknowledged, or proved and registered, agreeable to the direction of any act of assembly heretofore made; and the registry, or copy of the record of any deed or conveyance, registered or recorded as mentioned in this act, and attested by the register or clerk, shall and may, where the original deed or conveyance is lost, be given in evidence in any court of record, and shall be held, and is hereby declared to be full and sufficient evidence of such deed or conveyance; any law, statute, or usage, to the contrary, notwithstanding.

Witnesses to deeds, may be summoned to prove the same, and manner of summoning.

a [Or a dedimus
1784, c. 203, s.
3, 1782, c. 174,
s. 3.]

4. *And be it further enacted by the authority aforesaid,* That the grantee or grantees, in any deed heretofore made, or hereafter to be made, shall and may, at his own expense, on motion to the county court wherein the land by the same granted lies, obtain a summon for any one or more of the subscribing (a) witnesses to such deed, which shall be signed by the clerk, and directed to the sheriff, commanding him to summon such witness to appear at the next county court, and give his evidence concerning the execution of such deed, under the penalty of twenty pounds: and the sheriff shall, and is hereby required to execute the same, at least five days before the court to which the same is returnable, and make due return thereof; for which summon, service, and return, the clerk and sheriff shall be paid the same fees as are allowed on issuing, serving, and returning, subpoenas in actions; and if any witness to a deed, so summoned, shall fail to appear

on the return of such summon, the court shall give judgment against him for the penalty aforesaid, for which execution may be taken out, either against his body or goods, by him or them at whose instance he shall be summoned, unless he shew sufficient cause to the next succeeding court for not having appeared to give his evidence.

5. *And be it further enacted by the authority aforesaid,* That every register who shall neglect or delay to register any deed or conveyance within two months after the same shall be delivered to him, such register, for each and every two months he shall so neglect or delay, shall forfeit and pay the sum of twenty pounds, proclamation money; one half to the church-wardens, for the use of the parish wherein he shall reside, and the other half to him or them who will sue for the same; to be recovered by action of debt, with costs.

Penalty on register neglecting to register deeds.

6. And whereas the validity of several patents, granted by the deputies of the late lords proprietors, has been questioned, on supposition that their power had been determined before the arrival of a governor in this province, appointed by his majesty: wherefore, to secure the possessions of such as complied with the forms of government, then used, in taking out patents, *Be it enacted by the authority aforesaid,* That all patents made and issued by the deputies of the late lords proprietors, at any time whilst they had the administration of the government of this province, until the revocation or determination of their power to grant lands, was publicly signified and made known by some public act of government, shall, and are hereby declared to be good and available in law, and shall enure and take effect, as fully and absolutely, to the benefit and advantage of all persons in possession of any lands granted thereby, and to their heirs and assigns, as if their power to make and issue such patents had, at the time of making and issuing the same, been in no wise revoked or determined, except such as have been by the patentees at any time resigned or surrendered; which patents, so resigned or surrendered, shall receive no additional validity hereby, and shall be of no more force or efficacy, than they would have been before the passing this act; any thing herein, to the contrary, notwithstanding.

Validity of patents granted by Lords Proprietors declared good.

CHAP. 59.

An act to amend an act for empowering the several commissioners therein after named, to make, mend and repair all roads, bridges, cuts and water courses, already laid out, or hereafter to be laid out, in the several counties and districts therein after appointed, in such manner as they judge most useful to the public, and other purposes.

Part of Bladen
county added to
New Hanover.

1. AND whereas Bladen county extends down the North-West river of Cape Fear, the distance of fifteen miles below the upper bounds of New-Hanover county, which makes it very inconvenient for the inhabitants of Bladen county to work on the public roads in that district : For remedy whereof, *Be it enacted by the authority aforesaid,* That a north-east line be run directly from, and opposite the mouth of Levingston's creek, to Black river, then down the said river to the mouth thereof, and then up the North-West river to the mouth of the said creek ; and all the lands within the said bounds are hereby annexed to the county of New-Hanover, and shall hereafter be deemed and held to be within the limits of the same, and make part of the north-west district of New Hanover county ; and the inhabitants thereof subject and liable to such duties, taxes and impositions, and also entitled to the rights, privileges and advantages as the other inhabitants of the said county are.

No other part of
this act is in
force.

CHAP. 60.

An act to re-establish the counties of Rowan, Cumberland and Orange.

1. WHEREAS an act for erecting the upper part of Anson county into a county and parish, by the name of Rowan county, and St. Luke's parish, and for appointing a place for holding a court in the said county ; an act, entitled, an act for erecting the upper part of Bladen county into a county, and parish, by the name of Cumberland county, and St. David's parish; (a) and an act for dividing part of Granville, Johnston and Bladen counties into a county and parish, by the name of Orange county, and the parish of St. Matthew, and for appointing vestrymen for the said parish, and other purposes therein mentioned, have been repealed by an act, entitled, An act for re-establishing several counties and towns, and for other purposes : And whereas his majesty has been graciously pleased, by his royal instructions, to authorise

[This act is
not to be found.]

his excellency the governor to give his assent to an act to re-establish the counties aforesaid :

2. *Be it therefore enacted by the Governor, Council and Assembly, and by the authority of the same,* That the several divisions or districts of this province which have heretofore belonged to the respective counties aforesaid, before the repeal of the before recited acts of assembly, shall, and are hereby declared to be re-established into counties, by the respective names by which each county or district, at the time of the repealing of the aforesaid acts, was known and denominated ; and each of the said counties shall be limited and bounded according to the bounds and limits heretofore known and reputed to be the bounds and limits thereof.

Counties re-established.

3. *And be it further enacted,* That all deeds and conveyances for the conveying of any lands, lots, or tenements, in either of the said counties, to any person or persons whatsoever, either to the use of the public, or to their own use, in consequence of the said acts of assembly so repealed as aforesaid, shall and are hereby declared to be good and valid in law, and shall enure and take effect as fully, to the benefit of the grantees, their heirs and assigns, and all other persons concerned, as if the same had never been repealed.

Deeds for lands in such counties declared valid.

SIGNED BY

ARTHUR DOBBS, *Esq. Governor.*

MATTHEW ROWAN, *President.*

SAMUEL SWANN, *Speaker.*

ANNO REGNI GEORGHII II.

TRICESIMO PRIMO.

Arthur Dobbs,
Esq. governor.

At a General Assembly, begun and held at Newbern, on the twelfth day of December, in the year of our lord one thousand seven hundred and fifty-four, and from thence continued, by several prorogations, to the twenty-first day of November, in the year of lord one thousand seven hundred and fifty-seven: being the fifth session of this Assembly.

CHAP. 61.

An act for adding part of Beaufort to Craven county, for ascertaining the dividing line between the said counties.

1. WHEREAS the inhabitants of that part of Beaufort county, lying between Bay river and lower Broad creek, are, by reason of the removal of the court of the said county at a very great distance from the same, and are often put to great hardships and fatigue in attending their county court at such a distance; and whereas it would be much more convenient to the said inhabitants, if that part of the said county of Beaufort was added to Craven county:

Part of Beau-
fort added to
Craven county.

2. *Be it therefore enacted by the governor, council, and Assembly, and it is hereby enacted by the authority of the same,* That that part of the said county of Beaufort, lying between Bay river and lower Broad creek as aforesaid, be from henceforth deemed, held, and taken to be part of Craven county; and that the inhabitants thereof be subject and liable to the same rules, orders, and taxes, as any other of the inhabitants of the said county of Craven now are, or shall hereafter be, subject or liable to: any law, usage, or custom, to the contrary, notwithstanding.

Bounds be-
tween Craven &
Beaufort ascer-
tained.

3. And whereas the bounds of the said counties of Beaufort and Craven are very uncertain, by reason of a dividing line between the same never being as yet properly ascertained; *Be it therefore enacted by the authority aforesaid,* That from henceforward the bounds of the said counties be by Bay river, from the mouth thereof, up the main westernmost branch, to the head; thence by the Flat

swamp that makes from the head of the said river ; and from the head of the said Flat swamp, by a line to be run nearly equidistant between Tar and Neuse rivers ; and that Mr. John Hardy and Mr. Joseph Bryan are hereby appointed commissioners for running the said line, which shall be at the expense of each county respectively.

SIGNED BY

ARTHUR DOBBS, *Esq. Governor,*

MATTHEW ROWAN, *President.*

SAMUEL SWANN, *Speaker.*

ANNO REGNI GEORGII II.

TRICESIMO SECUNDO,

At a General Assembly, began and held at Newbern, on the twelfth day of December, in the year of our Lord one thousand seven hundred and fifty-four, and from thence continued by several prorogations, to the twenty-third day of November, in the year of our Lord one thousand seven hundred and fifty-eight, then held at Edenton: Being the seventh session of this Assembly.

Arthur Dobbs,
Esq. governor.

CHAP. 62.

An act for dividing the county of Johnston, and other purposes.

1. Whereas the large extent of the county of Johnston, renders it grievous and burthensome to many of the inhabitants thereof to attend the courts and general musters, and other public meetings therein :

2. *Be it enacted by the Governor, Council and Assembly,* County divided, and by the authority of the same. That from and after the tenth day of April next, the said county be divided by the dividing line between the parish of St. Patrick, and the parish of St. Stephen ; and that that part of the said county which is now the parish of St. Stephen, remain, be called and known by the name of Johnston ; and that that part of the said county which is the parish of St. Patrick, be thenceforth erected into a distinct county, and called and known by the name of Dobbs. (a)

Dobbs county
erected.

a [Dobbs divided into Lenoir and Glasgow, 1791, c. 356. —Glasgow changed into Greene, 1799, c. 39, private acts. See also 1764, c. 75.]

CHAP. 63.

An act for dividing Edgcomb county.

1. WHEREAS divers inconveniences attend the inhabitants of Edgcomb county, by reason of the large extent thereof, and the great distance that many of them live from the court-house, and other places usually appointed for public meetings :

County divided.

2. *Be it therefore enacted by the Governor, Council and Assembly, and by the authority of the same, That from and immediately after the first day of January next ensuing, the said county of Edgcomb be divided, by the dividing line between the parish of Edgcomb and the parish of St. Mary ; and that that part of the said county which is now the parish of St. Mary, remain, be called, and known by the name of Edgcomb county ; and that that part of the said county which is now the parish of Edgcomb, be thenceforth erected into one distinct county, and called and known by the name of Halifax.*

Halifax erected.

SIGNED BY

ARTHUR DOBBS, *Esq. Governor.*MATTHEW ROWAN, *President.*SAMUEL SWANN, *Speaker.*

ANNO REGNI GEORGH II.

Arthur Dobbs,
Esq. governor.

TRICESIMO TERTIO.

At a General Assembly, begun and held at Newbern, on the twelfth day of December, in the year of our Lord one thousand seven hundred and fifty-four, and from thence continued by several prorogations, to the twentieth day of November, in the year of our Lord one thousand seven hundred and fifty-nine, then held at Wilmington : Being the ninth session of this Assembly.

CHAP. 64.

An act for erecting part of the counties of Chowan, Bertie, and Northampton into a county and parish.

1. WHEREAS the large extent of the counties of Chowan, Bertie and Northampton, renders it grievous and burthensome to many of the inhabitants thereof to attend the courts of justice and other public meetings, appointed therein : For remedy whereof,

Hartford county erected.

2. *Be it enacted by the Governor, Council and Assembly, and by the authority of the same, That from and after the first day of May next, the said counties be divided, as*

follows, to wit, Beginning in Bertie county at the first high land on the north-west side of Mare branch, on Chowan river pocoson; running thence by a direct line to Thomas Outlaw's plantation, near Stoney creek; thence by a direct line to Northampton county line, at the plantation whereon James Rutland formerly lived; then along Northampton county line to the head of Beaver Dam Swamp; thence by a direct line to the easternmost part of Kerby's creek; thence down the creek to Meherrin river; then up Meherrin river to the Virginia line; then easterly along the Virginia line to Bennet's creek; then down Bennet's Creek to Chowan river; then across the river to the mouth of the said Mare branch; and up the branch to the beginning: And all that part of the said counties included within the said bounds be thenceforth erected into a distinct county and parish, and called and known by the name of Hertford county, and parish of St. Barnabas.

CHAP. 65.

An act to amend an act, entitled, an act for building and maintaining of court-houses, prisons, and stocks, in every county within this province, and appointing rules for each county prison, for debtors. (a) a [1741, c. 33.]

1. WHEREAS by one act of Assembly, passed in the fifteenth year of his present majesty, entitled, an act for building and maintaining of court-houses, prisons, and stocks, in every county within this province, and appointing rules for each county prison for debtors, it is, among other things, enacted, that every person committed to gaol (not for treason or felony) upon giving bond and security to the sheriff of the county, may have the liberty of the rules of the prison to which he is committed; which indulgence hath been greatly abused:

2. *Be it therefore enacted by the governor, council, and assembly, and by the authority of the same,* That all and every bond or bonds which shall hereafter be given in pursuance of the said act by any person or persons committed on a *capias ad satisfaciendum*, shall, by the sheriff taking the same, be assigned by the party at whose instance such person or persons was or were committed to gaol, and shall be returned to the office of the clerk of the court from whence such execution issued, there to be safely kept, and shall have the force of a judgment; and if any

Bonds for prison bounds to be assigned to the party, &c.

In case of escape, execution may issue on motion.

person who shall obtain the rules of any prison, upon giving bond and security as aforesaid, shall escape out of the same before he shall have paid the debt, or damages and costs, according to the condition of such bond, it shall be lawful, and full power and authority is hereby given to the court where such bond is lodged, upon motion of the party for whom such execution issued, to award execution against such person and his securities, for the debt, or damages and costs, with interest, to be computed from the time of such escape till payment: and no person or persons whatsoever, who shall be committed to gaol on any such execution, shall have or be allowed the rules of any prison, but shall be kept in safe custody in the prison to which he or they shall be committed, until the whole debt or damages, with interest, and costs, shall be fully paid and satisfied: any thing in the said act contained, to the contrary, notwithstanding.

And a person committed thereon must be confined in the prison itself.

Notice before motion on the bond.

3. *Provided always*. That such obligor shall have ten days previous notice of such motion in writing, and the obligors, in such case, shall not be admitted to plead *non est factum*, in their defence, unless they shall, by affidavit, prove the truth of such plea.

SIGNED BY

ARTHUR DOBBS, *Esq. Governor.*

JAMES HASELL, *President.*

SAMUEL SWANN, *Speaker.*

ANNO REGNI GEORGH II.

TRICESIMO QUARTO.

At an Assembly, begun and held at Newbern, the twenty-fourth day of April, in the thirty-third year of the reign of our Sovereign Lord George the Second, by the Grace of God, of Great-Britain, France, and Ireland, King, &c. and from thence continued, by several prorogations, to the thirtieth day of November, in the year of our Lord one thousand seven hundred and sixty, to be then held at Wilmington: Being the fourth session of this present Assembly. Arthur Dobbs, Esq. governor.

CHAP. 66.

An act for erecting the upper part of Beaufort county into a county and parish, by the name of Pitt county, and St. Michael's parish; and for adjourning the court from the court-house, on the land of Thomas Bonner, to the court-house in Bath-Town; and other purposes therein mentioned.

1. WHEREAS the large extent of the county of Beaufort renders it grievous and burthensome to the inhabitants thereof to attend the courts, general musters, and other public meetings appointed therein:

2. *Be it therefore enacted by the Governor, Council and Assembly, and by the authority of the same,* That from and after the first day of January next, the upper part of the said county of Beaufort, beginning at the line between the said county and Tyrrel, running south south-west to Cherry's run, where the main road crosses the said run; thence down the said run to Tranter's creek; thence down the said creek to Pamplico river; thence down the said river to the Fork Point, on the south side of said river; thence up Chocowinity bay and creek to the head thereof; thence south south-west to the dividing line of the said county and Craven; thence along the dividing lines of Craven, Dobbs, Edgecomb and Tyrrel; so that all that part of Beaufort county to the westward of Cherry's run, Chocowinity bay and creek, shall and is hereby declared to be a separate county and parish, and shall be called and known by the name of Pitt county and St. Michael's parish, with all and every the rights, privileges, benefits and advantages, whatsoever, which any other county or parish within this province can, shall, or may lawfully hold, use or enjoy. Pitt county erected.

CHAP. 67.

See 1756, c. 58, & 1764, c. 73.] An act to amend an act, entitled, An act for the relief of such persons as have suffered, or may suffer, by not having had their deeds and mesne conveyances proved and registered within the time heretofore appointed for such purposes, and prevent disputes and law suits concerning lands.

1. WHEREAS by the aforesaid act any person or persons having deeds or mesne conveyances within this province, were to register the same within eighteen months after passing the said law, and many persons, through want of knowing the said law, have neglected to have their deeds or mesne conveyances registered according to the purport thereof: For remedy whereof,

Deeds may be registered within 18 months.

2. We pray it may be enacted, *And be it enacted by the Governor, Council and Assembly, and by the authority of the same,* That all deeds and mesne conveyances of lands, tenements, and hereditaments, not already registered, acknowledged, or proved, shall and may, within eighteen months after the passing this act, be acknowledged by the grantor, their agents or attorneys, or proved by one or more of the subscribing witnesses, to the same, and tendered and delivered to the registers of the counties where such lands, tenements, and hereditaments, respectively lay; and all deeds and mesne conveyances whatsoever, which shall be acknowledged or proved according to the directions of this act, and also such as have been heretofore recorded by the clerk, or registered by the register of any precinct or county wherein the lands or tenements mentioned in the same lie or are situate, though not within one year after the date of the respective conveyances, shall be good and valid in law, and shall enure and take effect as fully and effectually, to the use and behoof of the grantee, their heirs and assigns, and those claiming under them, as if such deeds and conveyances were acknowledged, or proved and registered, agreeable to the directions of any act of Assembly heretofore made.

Sheriff to read the act at the door of each court-house.

3. *And be it further enacted by the authority aforesaid,* That every sheriff within this province shall, on the second day of every inferior court of the county whereof he is sheriff, read this act at the door of the court-house, immediately after the sitting of the court.

SIGNED BY

ARTHUR DOBBS, Esq. Governor.

JAMES HASELL, President

SAMUEL SWANN, Speaker.

ANNO REGNI GEORGII III.

PRIMO.

At an Assembly, began and held at Wilmington, the twentieth day of March, in the first year of the reign of our sovereign lord GEORGE the Third, by the Grace of God, of Great-Britain, France, and Ireland, king, defender of the faith, &c. and in the year of our Lord one thousand seven hundred and sixty-one : being the first session of this present assembly.

Arthur Dobbs;
Esq. governor.

CHAP. 68.

An act for adding part of Orange county to Johnston county, and for ascertaining the dividing line between the said counties.

1. *Be it therefore enacted by the governor, council, and assembly, and by the authority of the same.* That that part of Orange county lying on Neuse river, be added to the county of Johnston ; and be divided by a line to begin at the south-west corner of Granville county, and running thence a due south course to Johnston or Cumberland county line, which of the said county lines it may first intersect.

Part of Orange
added to John-
ston.

2. *And be it further enacted by the authority aforesaid,* That the part of Orange county hereby added to Johnston county, from henceforth shall be deemed, held, and taken to be part of the county of Johnston ; and that the inhabitants thereof be subject and liable to the same rules, orders, and taxes, as any other of the inhabitants of the said county now or shall hereafter be subject or liable to ; any law, usage, or custom, to the contrary, notwithstanding.

Part of Orange
deemed John-
ston county.

SIGNED BY

ARTHUR DOBBS, *Esq. Governor.*

JAMES HASELL, *President.*

SAMUEL SWANN, *Speaker.*

Read three times, and ratified in open Assembly,
the 23d day of April, 1761.

ANNO REGNI GEORGII III.

TERTIO.

Arthur Dobbs,
Esq. governor.

At an Assembly, begun and held at Newbern, the third day of November, in the third year of the reign of our sovereign Lord George the third, by the grace of God, of Great-Britain, France, and Ireland, king, defender of the faith, &c. and in the year of our Lord one thousand seven hundred and sixty-two, being the first session of this present Assembly.

CHAP. 69.

An act for the better care of Orphans, and security and management of their estates.

1. WHEREAS the greatest part of the estates in this province belonging to orphans are of so inconsiderable value that an application to the court of chancery, in many instances, will occasion an expense, which the profits of them are not sufficient to defray; and it having been found by experience, that the court of each respective county, exercising the power of regulating the education of orphans. and the management of their estates, have proved of singular service to them.

Cases in which
a father may dis-
pose of the cus-
tody and tuition
of his children.

2. *Be it therefore enacted by the Governor, Council, and Assembly, and by the authority of the same,* That where any person hath, or shall have any child or children under the age of twenty-one years, and not married, it shall and may be lawful to and for the father of such child or children, whether born at the time of his death, or in *ventre sa mere*, or whether such father be within the age of twenty-one years, or of full age, by deed executed in his life-time, or by his last will and testament in writing, in such manner, and from time to time, as he shall think fit, to dispose of the custody and tuition of such child or children, for and during such time, as he, she, or they shall remain under the age of twenty-one years, or for any less time, to any person or persons other than the people called Quakers and Popish Recuants; and every such disposition heretofore made, or hereafter to be made, shall be good and effectual against all and every person and persons claiming the custody and

Authority of the
guardian.

tuition of such child or children, as guardian, in soccage, or otherwise; and the person or persons to whom such custody and tuition hath been, or shall be so disposed or devised, shall and may maintain an action of ravishment of ward or trespass against any person or persons who shall wrongfully take away or detain any such child or children, for the recovery of such child or children, and shall and may recover damages for the same in the said action, with costs, for the benefit of such child or children.

3. *Provided nevertheless*, That nothing in this act contained shall be construed to hinder any of the people commonly called Quakers to make such disposition, or to hinder the superior or inferior courts from committing the guardianship and custody of their children to the people of that persuasion; and that every person or persons to whom such tuition and custody hath been, or shall be so disposed or devised as aforesaid, shall and may take into his or their possession, for the use of such child or children, the profits of all lands, tenements and hereditaments; and also the slaves, goods, and chattels, and personal estate of such child or children; and may bring such action or actions in relation thereunto, as by law a guardian, in common soccage might do.

Proviso for Quakers.

4. *Provided always*, That nothing herein before contained shall extend to discharge any apprentice from his apprenticeship; and the superior court of the district, or the inferior court of pleas and quarter sessions of the county wherein such guardian shall reside, respectively, upon complaint to them made of such guardian abusing the trust reposed in him, by misusing the child or children so committed to his tuition as aforesaid, in being about, or intending to marry such child or children in disparagement, neglecting the care of their education suitable to their estate, or wasting, converting to his own use, or otherwise mismanaging such estate, to make and establish, from time to time, such rules and orders for placing such child or children under the care and tuition of any other person or persons, securing the estate, and for the better education and usage of such child or children, as they, in their discretion, shall judge meet and necessary.

Not to discharge apprentices.

Court's authority to interfere where a guardian abuses his trust.

5. *And be it further enacted by the authority aforesaid*, That the superior courts and inferior courts of pleas and quarter-sessions of this province, within their respective

Courts power over orphans.

jurisdictions have, and shall have full power and authority. from time to time, to take cognizance of all matters concerning orphans (*a*) and their estates, and to appoint guardians in such cases where to them it shall appear necessary; and shall take good security of all the guardians by them to be appointed for the estate of the orphans by them committed: and if any court shall commit an orphan's estate to the charge or guardianship of any person or persons without taking good and sufficient security for the same, the justice or justices appointing such guardian shall be liable for all loss and damages sustained by the orphan for want of such security being taken; to be recovered by action, at the common law, in any court of record in which the same is cognizable, at the suit of the party grieved.

Penalty for neglect.

Proviso, where security was at first good.

Bonds given by guardians, payable to the justices, in trust for orphans.

Manner of prosecuting a suit, &c.

Proviso, where judgment for guardian, &c.

6. *Provided always*, That where the securities were good at the time of their being taken or accepted, but afterwards become insolvent, in such case the justice or justices shall not be liable.

7. *And be it further enacted*, That the bond to be given by any person or persons appointed guardian as aforesaid, shall be made payable to the justice or justices present in court and granting such guardianship, the survivors or survivor of them, their executors or administrators, in trust, for the benefit of the child or children committed to the tuition and care of such guardian; which bond such court shall cause to be acknowledged before them and recorded; and that in the name of the justice or justices to whom the said bond is made payable, the survivors or survivor of them, their executors or administrators, any person or persons injured, may and shall, at his, her or their costs and charges, commence and prosecute a suit (*b*) against such guardian and his securities, executors or administrators; and shall and may recover all damages which he, she, or they have sustained, by reason of the breach of the condition thereof.

8. *Provided always*. That if any verdict or judgment shall pass for such guardian or his securities, the person at whose instance such suit shall be commenced or prosecuted, shall pay costs.

a [In case of a separation of husband and wife, the children born after the marriage are orphans where the mother is secured in her property, 1800, c. 567.] The superior or county courts may appoint a guardian though the father be alive, 1806, c. 707.

b The securities discharged in 3 years after the orphan comes of age, 1795, c. 443.]

9. *And be it further enacted by the authority aforesaid,* That when a guardian shall be appointed to an orphan by any superior or inferior court, such guardian shall, at the next court (*a*) after his appointment, exhibit an account, upon oath, of all the estate of such orphan which he or she shall have received into his or her hands or possession; and every guardian heretofore, or hereafter to be by any such court appointed, shall annually exhibit his account, and state of the profits and disbursements of the estate of such orphan upon oath; and such account so to be exhibited, shall be entered by the clerk in particular books to be provided and kept for that purpose only: And when the said courts shall know or be informed that any guardian or guardians by them respectively appointed, do waste or convert the money or estate of any orphan to his or their own use, or do in any manner mismanage the same, is about, or intends to marry him or her in disparagement, or neglects to educate or maintain any orphan according to his or her degree and circumstances, or where any such guardian or his securities are likely to become insolvent; such court shall have power, from time to time, to make and establish such rules and orders for the better ordering, managing, and securing such estate, and for the better education of, and maintaining such orphans, or to appoint another guardian, as they shall think fit and convenient.

10. *And be it further enacted,* That every guardian, executors or administrators, as soon as conveniently the same may be done, shall, by order of the superior or inferior court of pleas and quarter sessions, cause the sheriff (*b*) to sell and dispose of all the goods and chattels of his or her ward as are or may be liable to perish, consume, or be the worse by using or keeping (except in the instances hereafter mentioned) for the most that can be got for the same, by public sale, (*c*) having first advertised the same at all public places within the county, at least twenty days before the day of sale, in reasonable lots, and shall, for enhancing the price thereof, give six months credit, upon good security given, for which service the sheriff may be allowed by the court, so as such allowance does not exceed two and a half per cent. and such guardian, after the time of such payment is past, shall take and pursue all lawful ways and means to receive and recover the money, (*d*) upon pain of being answerable for the same; and if the same cannot be received

Duty of guardians.

a [The clerk to issue summons against guardians who have failed to exhibit their accounts, 1816, c. 905.]

Courts' power where they abuse their trust.

Direction to guardians, executors, &c. to sell the perishable estate, &c.

b [The sheriff to sell only where administration is granted to a creditor, 1793, c. 391.]

c [Entitled to compound interest, 1816, c. 925.]

d [Sales to take place between 11 & 4 o'clock, 2, 1794, c. 413.]

In what cases
the bond to be
assigned to the
orphan.

Guardian in
case of neglect,
liable for insol-
vency.

In what cases
slaves and stock
to be kept on an
orphan's land.

Proviso, where
the stock is too
numerous.

Plate to be de-
livered in kind.

manner of let-
ting out an or-
phan's land.

a [It must be
done by public
vendue or auc-
tion, 1794, c.
613.]

before the orphan entitled to receive such money shall have a right to demand it, or such guardian shall be removed from his guardianship, he or she shall and may assign such bond to such orphan, and such assignment shall discharge such guardian for so much against him, her or them : And where the profits of any orphan's estate shall be more than sufficient to maintain and educate him or her, the guardian of such orphan shall lend the surplus, and all other sums of money in his hands belonging to such orphan, upon bond, with good and sufficient securities, to be approved of by the next succeeding court, and to be repaid with interest : which interest such guardian shall account for annually ; and where the person or persons to whom such money shall be lent, or their securities, are likely to become insolvent, such guardian shall use all lawful means to enforce the payment thereof, on pain of being liable for the same as aforesaid ; and an assignment of such last mentioned bond in either of the aforementioned cases, shall discharge such guardian for so much as is specified in the condition thereof.

11. *And be it further enacted*, That where any orphan shall have lands, and a sufficient number of slaves to cultivate and improve the same, such slaves, unless otherwise ordered by the superior or inferior courts, shall be employed on the lands and plantations of such orphan ; and all horses, cattle, sheep, or hogs, shall be kept upon such lands and plantations until such orphan comes of age ; and he or she shall have the benefit of the increase, and shall sustain the loss, if any shall happen.

12. *Provided nevertheless*, That if any such stock grow too numerous, or if it will be to the advantage of such orphan, his or her guardian shall and may sell, by order of the superior or inferior court, such part of such stock as such court shall think fit ; and all plate shall be preserved and delivered to such orphan when at age, in kind, according to weight and quantity.

13. *And be it further enacted*, That no guardian shall let or farm (a) out any land belonging to any orphan for a longer term than the orphan be of age, or in other manner than by lease, in writing ; and that special care be had that the tenant shall improve the plantation ; and that he or she keep the houses, orchards, and fences thereon, or that shall be erected on the same, in good and sufficient repair, and leave the same so at the expiration of such lease ; and that provision be made in such lease for pre-

venting all kind of waste, and employing any timber to any other use than the immediate use of the plantation.

14. *And be it further enacted*, That if the guardian of any orphan shall suffer his or her lands to lapse or become forfeited for non-payment of quit-rents, such guardian shall be liable to answer the full value of the lands so forfeited unto such orphan at his or her coming of age: and if it shall so happen that any orphan shall not have slaves to cultivate his or her lands, and the guardian of such orphan cannot rent the same for sufficient to pay and discharge the quit-rents thereof, and there shall not be personal estate sufficient for that purpose, it shall and may be lawful for such guardian, with the consent and approbation of the superior or inferior court, annually, to sell, or dispose of, or use so much of the light-wood, to box so many pine trees, or to sell so much of the timber on the same, as shall raise sufficient to pay and satisfy the quit-rents thereof, and no more.

15. *And be it further enacted by the authority aforesaid*, That the justices of every inferior court of pleas and quarter sessions in this province, respectively, shall on the first day of the court that shall be held next after the first day of January in every year, hold an orphans court for the purpose aforesaid; and every person heretofore appointed, or that shall hereafter be appointed guardian to any orphan by any court, or by deed or will as aforesaid, shall exhibit such account (a) as aforesaid, and the justices of every court shall, at the same court examine into all accounts of guardians so to be exhibited to them, and shall direct a summons to issue, returnable to their next court, against all guardians who shall then fail to appear and render such account, whether such guardian be resident in the same or any other county, and shall then also enquire into the abuses and mismanagement of guardians; and whether they, or their securities, are likely to become insolvent, and thereupon to proceed according to the power in this act before given; and if any such guardian shall wilfully neglect, after being summoned as aforesaid, to appear, or obstinately refuse to exhibit such account, it shall and may be lawful for the court to issue an attachment for such contempt, and to commit such guardian until he or she shall exhibit such account.

16. *Provided always*, That nothing herein before contained shall be construed to restrain the power of the inferior

Guardian liable if he suffers the orphan's land to lapse.

Provision, where the guardian cannot, out of the personal estate or rent, raise sufficient to pay the quit-rents.

Orphans court to be held once a year.

Guardians to exhibit their accounts.

a [See 1816, c. 905.]

Courts to enquire into abuses, &c.

Guardian liable to attachment for contempt.

Courts power at any time to en-

quire into abuses.

Grand jury to present the names of orphans, without guardians, &c. and abuses of guardians.

Reasonable disbursements allowed guardians.

a [He is allowed a sum not exceeding 5 per cent. upon the receipts & expenditures, 1799, c. 5 § 6.]

Disbursements to be suitable to the orphan's circumstances.

Who to be bound out, &c.

b [If any person deserts his family without support, his children are orphans, 1796, c. 468, s.

Duty of the master or mistress.

c [Master to give bond not to remove orphans, &c. of colour, 1801, c. 383.]

courts of pleas and quarter sessions in enquiring, as often as they shall think proper, into the abuses and mismanagement of guardians; but that it shall be lawful for them to execute such power at any time or times when to them it shall appear necessary; any thing in this act contained to the contrary notwithstanding.

17. *And be it further enacted*, That the grand jury of every county in this province shall, annually, at the orphan's court, to be holden for their counties, respectively, be charged with, and present to the justices thereof, in writing, the names of all orphan children within their parish that they shall know have not guardians appointed them; and are not bound out to some trade or employment; and all abuses, mismanagements and neglect of such guardians as live within their county.

18. *And be it further enacted by the authority aforesaid*, That it shall and may be lawful for every guardian to charge in his account all reasonable disbursements and expenses; (a) and if, upon rendering such account, it shall appear to the court that such guardian hath really and *bona fide*, disbursed more in one year than the profits of the orphan's estate do amount unto, for the education and maintenance of such orphan, such guardian shall be allowed and paid for the same out of the profits of such orphan's estate in any other year.

19. *Provided always*, That such disbursements be, in the opinion of such court, suitable to the degree and circumstances of the estate of such orphan; and that where such estate shall be of so small value that no person will educate and maintain him or her for the profits thereof, such (b) orphan shall, by direction of the court, be bound apprentice; every male to some tradesman, merchant, mariner, or other person approved by the court, until he shall attain to the age of twenty-one years; and every female to some suitable employment, till her age of eighteen years: And also such court may, in like manner, bind apprentice all free base born children; and every such female child, being a mulatto or mustee, until she shall attain the age of twenty-one years: (c) And the master or mistress of every such apprentice, shall find and provide for him or her diet, clothes, lodging, and accommodations, fit and necessary; and shall teach or cause him or her to be taught, to read and write: and, at the expiration of his or her apprenticeship, shall pay every such apprentice the like allowance as is by law ap-

pointed for servants by indenture or custom; and on refusal shall be compelled thereto, in like manner: and if upon complaint made to the inferior court of pleas and quarter sessions, it shall appear that any such apprenticeship is ill-used, or not taught the trade, profession, or employment to which he or she was bound, it shall be lawful for such court to remove and bind him or her to such other person or persons as they shall think fit.

Court's power, if apprenticeship is ill-used.

20. *And be it further enacted*, That the binding of such apprentice (a) by order of court as aforesaid, shall be by indenture, made in the name of the presiding acting justice of the court, and his successors, of the one part, and of the master or mistress to whom he or she shall be bound, of the other; which indenture shall be acknowledged or proved before such court, and recorded, and a counterpart thereof shall remain and be kept in the clerk's office for the benefit of such apprentice; and that any person or persons injured, may and shall, at his or her costs and charges, prosecute a suit thereon in the name of such justice, or his successors, and recover all damages which he or she may have sustained by reason of the breach of the covenants therein contained; and if any verdict or judgment shall pass for such master or mistress, he or she shall recover costs.

Manner of binding apprentices.

a [An apprentice absenting himself liable to make satisfaction, 1812, c. 840.]

Manner of suing in case of injury,

21. *And be it further enacted by the authority aforesaid*, That where any person who now is, or hereafter shall be security for the estate of any orphan, shall conceive himself in danger by reason thereof, and petition the court where such security was entered into for relief, it shall be lawful for such court, upon petition to them exhibited, forthwith to order summons to issue, against the party or parties with and for whom the petitioner stands bound, returnable to the next court; and thereupon to compel such party or parties to give sufficient other or counter securities, to be approved by the said court, or to deliver up the said estate to the said petitioner, or such other person as the court shall direct; or they may, and are hereby empowered, to make such other order or rule therein for the relief of the petitioner, and better securing such orphan's estate, as to them shall appear just and equitable.

Remedy for securities when likely to suffer.

22. *Provided always*, That such court shall take good and sufficient security of the person or persons to whom such estate shall be so committed, in like manner, and under the like penalty, as is by this act required to be taken of guardians appointed by the court; and every

Proviso.

such person shall also exhibit his account, and be subject to the rules and orders of the court, in the same manner, to all intents and purposes, as is herein before required of guardians, or they are made subject unto.

Legacies, &c.
how recover-
able.

23. *And be it further enacted by the authority aforesaid,* That all legacies, filial portions, distributive shares of intestates' estates, sum or sums of money, or other estate, due or owing from any person appointed guardian to any orphan, or from any executors or administrators, or other person whatsoever, shall and may be recovered by petition to the superior courts of the districts, or any inferior courts of pleas and quarter sessions, respect being had to the jurisdiction of the said court; and that in all suits by petition as aforesaid, and in the said courts respectively, the following rules and methods shall be observed, to wit,

Rules of court.

The petitioner shall file his petition in court, upon exhibiting the same, and thereupon summons shall be issued by the clerk of course; and that, upon the defendant's being served therewith, and with a copy of the said petition, he shall appear and put in his answer or plea upon oath, or demur.

That upon an answer, plea, or demurrer being filed as aforesaid, the petitioners may move the court to have the same set for hearing, and immediately argued, and thereupon the court shall proceed to hear and determine the same according as the matter in equity and law shall appear to them, without regard to form, or want of form in the petition, process, or course of proceedings.

That upon the defendant's being served with a summons, and a copy of the petition ten days before the court to which such summons is returnable, and oath made thereof, if he shall fail to appear and plead, answer or demur as aforesaid, the petitioner's petition shall be taken *pro confesso*, and the matter thereof decreed accordingly, with costs; unless on special reasons shewn to, and approved of by the court, time shall be allowed such defendant to file such plea, answer or demurrer.

That upon the petitioner dismissing his petition, or the same being dismissed for want of prosecution, he shall pay costs.

And if any defendant shall appear on such summons, and shall obstinately refuse to answer the petition of the petitioner, the same shall be taken *pro confesso*, and the matter decreed as aforesaid.

Every defendant shall be at liberty to swear to his answer or plea before any justice.

That when a plea or demurrer shall be over-ruled, the defendant shall file his answer the same court.

That when the petitioner shall be minded to disprove the answer of the defendant and support his claim, he may reply.

Commissions to examine witnesses may be awarded by the court after replication filed, the party taking out such commission giving the adverse party ten days' notice of the time and place of executing the same.

And that upon a decree being made on any such petition it shall and may be lawful for the court who shall make the same, to grant execution against the defendant's body, goods and chattels, lands and tenements, for satisfying such decree and costs: any law, usage, or custom to the contrary notwithstanding.

24. *And be it further enacted by the authority aforesaid,* Appeal granted.
That when any person shall conceive himself injured or aggrieved by order or sentence of any inferior court, in appointing a guardian to any orphan, or in removing any orphan from the care and tuition of any person who has been appointed such, or on refusing to make such appointment or removal as aforesaid, he may appeal from such order or sentence to the court of chancery of this province, or to the superior court of the district, at his option; and the party praying such appeal shall file a copy of the proceedings of the inferior court therein with the clerk of the chancery, or the clerk of the superior court (as the case may be) fifteen days before the sitting of such court, and thereupon it shall and may be lawful for the court, to which such appeal is made, to proceed to rehear the matter, and either affirm or reverse such order or sentence, and thereupon to award execution for all such costs and charges as shall be occasioned by such appeal.

25. *Provided, nevertheless,* That the party praying such appeal, before the same shall be granted by the inferior court, shall enter into bond, with sufficient security, for prosecuting such appeal with effect; and the payment of all such costs and charges as shall be awarded against him in case he shall be cast in his said appeal. Appellant to give bond and security.

26. *Provided also,* That nothing in this act contained shall be construed to restrain or abridge the power of the said court of chancery, in any matter or thing relating to orphans or their estates; but the said orphans shall and Court of chancery's power not abridged.

may hold, use, exercise, and enjoy, the same jurisdictions, powers and authorities therein, in as full and ample manner, to all intents and purposes, as if this act had never been made; any thing herein contained to the contrary notwithstanding.

CHAP. 70.

An act for the more easy recovery of money due upon promissory notes, and to render such notes negotiable.

1. **WHEREAS** promissory notes are of great utility, as well to merchants as others, and there being no method of recovering money specified in such notes by any act of assembly in force in this province: For remedy whereof,

Promissory notes made negotiable as inland bills of exchange, &c.

2. *Be it therefore enacted by the Governor, Council and Assembly, and by the authority of the same,* That all notes signed by any person or persons, body politic or corporate, or by the servant or agent of any corporation, banker, merchant or trader, who is, or shall be usually intrusted to sign such promissory notes for them, whereby such person or persons, body politic or corporate, or the servant or agent of any corporation, banker, merchant, or trader, shall promise to pay any person or persons, body politic or corporate, or the servant or agent of any corporation, banker, merchant, or trader, or order; the money mentioned in such note, shall be construed to be, by virtue thereof, due and payable to such person or persons, body politic or corporate, or the servant or agent of any corporation, banker, merchant or trader, to whom the *same* is made payable; and also, such note payable to such person or persons, body politic or corporate, or the servant or agent of any corporation, banker, merchant or trader, or order, may be assignable (a) over in like manner as inland bills of exchange are by custom of merchants in England; and the person or persons, body politic or corporate, or the servant or agent of any corporation, banker, merchant or trader, to whom such money is or shall be payable, may maintain an action for the same, as they might upon such bill of exchange; and the person or persons, body politic or corporate, or the servant or agent of any corporation, banker, merchant or trader, to whom such note so payable to order is assigned or indorsed, may maintain an action (b) against the person or persons, body politic or

a [All bills, bonds or notes for money, with or without seal, &c. made negotiable by 1786, c. 248, s. 1.]

b [The indorsee may maintain an action on the case, or of debt, if the obligee could do so, 1786, c. 248, s. 1, and 1789, c. 314, s. 3.]

corporate, or the servant or agent of any corporation, banker, merchant or trader; who signed, or shall sign, such note, or any who shall or have indorsed (a) the same, as in cases of inland bills of exchange, and recover damages, and costs of suit; and in case of non-suit, or a verdict shall pass against the plaintiff, the defendant shall recover costs.

3. *And be it further enacted by the authority aforesaid,* That when any person or persons shall, by order in writing signed by his or their proper hand, direct the payment of any sum or sums of money, in the hands or possession of any other person or persons, to the bearer or any person or persons whatsoever, the money therein specified, shall, by virtue thereof, be due and payable to such person or persons to whom the same is drawn payable, and may be put in suit against the person or persons who shall draw the same, or against the person or persons on whom the same shall be drawn, after acceptance thereof by him or them to whom the same shall be made payable, and recover damages.

4. *Provided nevertheless,* That no person or persons whatsoever, shall prosecute any suit against any person or persons, who shall give such order for the money therein mentioned, before the same shall have been first protested (b) for non-acceptance, and notice given thereof to the drawer, before such suit shall be brought; and if any suit shall be brought on any such order before notice, and refusal to pay as aforesaid, the plaintiff or plaintiffs shall be non-suit, and pay costs.

a [The indorsee may bring a joint action against the maker & indorsers, or against either, 1817, c. 937.]

Orders in writing on third persons good; and the drawer or acceptor liable.

But protest and notice necessary before suit against the drawer.

b [Protest may be made before a justice of the peace for want of a notary, 1812, c. 22.—Protest evidence of a demand, 1819, c. 1003.]

CHAP. 71.

An act for dividing the county of Anson, and other purposes.

1. *Be it enacted by the Governor, Council and Assembly, and by the authority of the same,* That from and after the first day of February, the said county of Anson shall be, and is hereby divided into two distinct counties, by a line beginning at Lord Carteret's line, six miles north-east from Captain Charles Hart's plantation on Buffalo creek, and to run from thence to the mouth of Clear creek, which empties itself into Rokey river, below Captain Adam Alexander's: and from thence due south to the bounds of the province of South-Carolina: And that all that part of said county which lies to the eastward of

Anson county divided, and Mecklenburg county erected.

said dividing line, shall be a distinct county, and remain and be called by the name of Anson county; and that all that part of the said county lying to the westward of said dividing line, shall be thenceforth one other distinct county, and called by the name of Mecklenburg.

SIGNED BY

ARTHUR DOBBS, *Esq. Governor.*

JAMES HASELL, *President.*

JOHN ASHE, *Speaker.*

Read three times and ratified in open Assembly, }
the 11th day of December, 1762. }

ANNO REGNI GEORGII III.

QUINTO.

Arthur Dobbs,
Esq. governor.

At an Assembly, begun and held at Wilmington, the thirtieth day of January, in the fifth year of the reign of our sovereign lord George the third, by the grace of God, of Great-Britain, France, and Ireland, king, defender of the faith, &c. and in the year of our Lord one thousand seven hundred and sixty-four: being the first session of this present Assembly.

CHAP. 72.

An act to empower the inferior courts of the several counties in this province to order the laying out of public roads, and to establish and settle ferries; and to appoint where bridges shall be built, for the use and ease of the inhabitants of this province; and to clear navigable rivers and creeks.

Penalty on persons not authorised transporting for pay, within ten miles of a ferry, &c.

(See 1787, c. 27.)

1. *And be it further enacted,* That if any person or persons after the passing of this act, not empowered to keep ferry, shall pretend to keep any ferry, or to transport any person or persons, or their effects, for pay, within ten miles of any ferry (being on the same river or water) which is already, or hereafter shall be appointed, such person or persons so pretending to keep ferry, or transporting any person or persons, or their effects, shall forfeit and pay the sum of twenty shillings, proclamation money, for every such offence, to the nearest ferryman; to be recovered by a warrant from any justice of the peace, upon full proof thereof made before him.

CHAP. 73.

An act to amend an act, entitled, an act for the relief of such persons as have suffered, or may suffer, by not having had their deeds and mesne conveyances proved and registered within the time heretofore appointed for such purposes; and to prevent disputes and law-suits, concerning lands.

See 1760, c. 67.

& 1766, c. 80.

1. WHEREAS by an act passed at Newbern, in the year of our lord one thousand seven hundred and fifty-four, entitled, an act for the relief of such persons as have suffered, or may suffer, by not having had their deeds and mesne conveyances proved and registered within the time heretofore appointed for such purposes; and to prevent disputes and law suits concerning lands; all deeds or mesne conveyances for any lands, tenements, or hereditaments within this province, were to be acknowledged or proved according to the directions of that act, and delivered to the registers of the counties wherein they are respectively situated, within the space of two years from the respective dates thereof; and many persons, through ignorance of the purport of the said law, having neglected to have their deeds or mesne conveyances proved and registered according to the directions of the said act: for remedy whereof,

2. *Be it enacted by the Governor, Council and Assembly, and by the authority of the same,* That all deeds and mesne conveyances of lands, tenements and hereditaments, not already registered, acknowledged, or proved, shall and may, within eighteen months after the passing of this act, be acknowledged by the grantor or grantors, his or their agents or attornies, or proved by one or more of the subscribing witnesses to the same, and tendered or delivered to the registers of the counties where such lands, tenements, or hereditaments, are respectively situated: and all deeds and mesne conveyances whatsoever, which shall be acknowledged or proved according to the directions of this act; and also, such as have been heretofore recorded by the clerk, or registered by the register of any precinct or county, wherein the lands or tenements mentioned in the same, lie, or are situate, though not within two years after the date of the respective conveyances, shall be good and valid in law, and shall enure and take effect, as fully and effectually, to the use and behoof of the grantees, their heirs and assigns, and those claiming under them, as if such deeds and conveyances were acknowledged, or proved and registered agreeable to the directions of any act of Assembly heretofore made.

Further time allowed for proving and registering deeds.

CHAP. 74.

An act for erecting part of St. Philip's parish, in New-Hanover county, and the lower part of Bladen county, into a separate county, by the name of Brunswick county; and for dividing the county of Granville, and erecting that part thereof called St. John's parish, into a separate and distinct county, by the name of Bute county.

Brunswick
county erected.

1. *Be it enacted by the governor, council and assembly, and by the authority of the same,* That that part of Bladen county which lies to the westward of the north-west branch of Cape-Fear river, be divided from the upper part of Bladen county, by a line beginning at the upper corner of a tract of land on which the plantation of John Grange is situate, above the mouth of Beaver-Dam creek, which plantation lately belonged to Mr. Robert Howe, running from thence a direct course to the east side of the lake on Waggamaw river; and from thence by a west line to the bounds of the province, so as to leave all the inhabitants on the said lake in Bladen county; and that the said lower part of Bladen county, together with all that part of New-Hanover county called St. Philip's parish, except so much thereof as lieth to the north-westward of the dividing line hereby directed to be run to the lake, and from thence to the bounds of this province, be erected into a distinct county, by the name of Brunswick county.

Part of St. Philip's
parish added to Bladen.

2. *And be it further enacted by the authority aforesaid,* That all that part of St. Philip's parish which lieth to the north-westward of the said line, to the east end of the lake, and from thence to the bounds of the province, be annexed to, and it is hereby declared to be part of Bladen county.

Bute county e-
rected.

3. And whereas by reason of the large extent of the county of Granville, it is greatly inconvenient for the inhabitants to attend the courts of the said county, general musters, and other public duties by law required: *Be it enacted by the authority aforesaid,* That from and after the tenth day of June next, the said county of Granville shall be divided into two distinct counties; and that all that part of the said county which is now called or known by the name of the parish of Granville, from and after the said tenth day of June, shall be a distinct county, and remain to be called Granville county; and that all that part of the said county called and known by the name of St. John's parish, shall, after the said tenth day of June, be one other distinct county, called by the name of Bute county.

[Bute county
divided into
Franklin and
Warren coun-
ties, 1779, c.
146.]

CHAP. 75.

An act directing the boundary line between the counties of Dobbs and Pitt, and appointing commissioners to see the same run.

1. WHEREAS by the act of Assembly, entitled, an act for erecting the upper part of Beaufort county into a county and parish, by the name of Pitt county, and St. Michael's parish; and for adjourning the court from the court house on the land of Thomas Bonner, to the court-house in Bath town, and other purposes therein mentioned, no commissioners were appointed by the said act for running the boundary line between the counties of Dobbs and Pitt; by reason whereof the line has never been run, and the inhabitants within the disputed bounds refuse to give in a list of their taxables or pay their taxes in either of the said counties: for remedy whereof,

2. *Be it enacted by the governor, council, and assembly, and by the authority of the same,* That Mr. Richard Caswell, Mr. John Simpson, and Mr. William Wilson, be appointed commissioners, and they are hereby empowered and required to run the said dividing line between the counties of Dobbs and Pitt; from Blount's ford on Little Cotentney creek, to Luke White's, then up the Middle Swamp to William Wilson's, and from thence to the nearest part of Edgcomb county; which said lines, when run by the commissioners aforesaid, or any two of them, shall be by them entered on record in the court of each of the said counties of Dobbs and Pitt, and shall thereafter be deemed and taken to be the dividing lines between the said counties.

Commissioners for running the dividing line.

[Dobbs divided into Lenoir and Glasgow, 1791, c. 356.—Glasgow changed into Greene, 1799, c. 39, private acts.]

CHAP. 76.

An act for altering the dividing line between the counties of Bladen and Cumberland.

1. WHEREAS the dividing line between the counties of Bladen and Cumberland, running north-east and south-west, is found to be inconvenient to the inhabitants of both the said counties:

2. *Be it enacted by the governor, council, and assembly, and by the authority of the same,* That from and after the passing of this act, the dividing line between the said counties of Bladen and Cumberland shall begin at the mouth of Rockfish, and shall run a due east course to Black river, and from the mouth of Rockfish creek, up

Dividing line.

the said creek to Gravely Hill, and from thence a due west course to Drowning creek ; and all the lands to the northward of the said line shall from henceforth be deemed and held to be a part of Cumberland county, and all the lands to the southward of the said line shall be deemed and held to be a part of Bladen county ; any law to the contrary notwithstanding.

Commissioners
for running it.

3. *And be it further enacted by the authority aforesaid,* That Mr. Isaac Jones, Mr. Farquhard Campbell, and Mr. Walter Gibson, be, and are hereby appointed and authorised commissioners, and are hereby empowered and directed to run the said line between the said counties of Bladen and Cumberland.

CHAP. 77.

An act for annexing part of Craven county to Dobbs county.

1. WHEREAS the inhabitants residing in that part of Craven county, lying on the southernmost side of the Southwest creek, and the upper branches of Trent river, labour under great hardships, fatigue and inconveniences, in attending the inferior courts, and other public meetings in the said county, at Newbern, where the same are generally held and called ; and as the said inhabitants are more contiguous to Dobbs county, where they can with greater ease and convenience attend, and are desirous of being annexed thereto :

Commissioners
for running the
line.

2. *Be it enacted by the Governor, Council and Assembly, and by the authority of the same,* That Mr. Joseph Leech, Mr. Richard Caswell, and Mr. Francis Mackilwean, be, and they are hereby appointed commissioners ; and they, or a majority of them, are required and directed, within three months after the passing of this act, to run and mark, or cause to be run and marked, a line from the south west bridge near James Caddell's, to Carnegie's old-field, on Rattlesnake branch ; then a direct line to William Randall's mill, on Trent river ; then to the place where Abraham Bailey lately lived ; and from thence south to the bounds of Onslow county ; and that all that part of Craven county lying to the westward of those lines be annexed to Dobbs county ; and the inhabitants thereof shall be liable and subject to the same duties, taxes and impositions, and entitled to the same privileges, benefits, and advantages, as the other inhabitants of the said county of Dobbs.

3. *And be it further enacted by the authority aforesaid,* Repealing
clause.
That all and every act and acts of Assembly of this province, and each and every clause and article thereof, so far as relates to any matter or thing within the purview of this act, is and are hereby repealed and made void, to all intents and purposes, as if the same had never been made.

SIGNED BY

ARTHUR DOBBS, *Esq. Governor.*

JAMES MURRAY, *President.*

JOHN ASHE, *Speaker.*

Read three times and ratified in open Assembly, 2
the 9th day of March, 1764. 5

ANNO REGNI GEORGE II. III.

QUINTO.

At an Assembly, begun and held at Wilmington, the thirtieth day of January, in the fifth year of the reign of our Sovereign Lord George the Third, by the Grace of God, of Great-Britain, France, and Ireland, King, Defender of the Faith, &c. and from thence continued, by prorogation, to the twenty-fifth day of October, in the year of our Lord one thousand seven hundred and sixty-four : Being the second session of this present Assembly. Arthur Dobbs,
Esq. governor.

CHAP. 78.

An act for altering the boundary line between the counties of Northampton and Hertford.

1. *Be it enacted by the Governor, Council and Assembly,* Dividing line.
and by the authority of the same, That from and after the first day of March next, the dividing line between the said county of Hertford and Northampton shall be altered as followeth, to wit, Beginning on Kirby's creek, where the dividing line joins the said creek, running thence up the creek to the fork thereof ; then up Turkey creek to Maple fork ; thence by a direct south course till it intersects the present dividing line.

2. *And be it further enacted by the authority aforesaid,* Commissioners
for running it.
That Joseph Sikes, William Murphy and Benjamin Wynns, or the majority of them, are hereby appointed

commissioners to run the said line ; which shall be done at the proper cost and charges of the county of Hertford.

SIGNED BY

ARTHUR DOBBS, *Esq. Governor.*

JAMES MURRAY, *President.*

JOHN ASHE, *Speaker.*

Read three times and ratified in open Assembly, }
the 27th day of November, 1764. }

ANNO REGNI GEORGII III.

SEPTIMO.

Wm. Tryon,
Esq. governor.

At an Assembly, begun and held at Newbern, the third day of November, in the seventh year of the reign of our sovereign lord GEORGE the Third, by the Grace of God, of Great-Britain, France, and Ireland, king, defender of the faith, &c. and in the year of our Lord one thousand seven hundred and sixty-six : being the first session of this present assembly.

CHAP. 79.

An act appointing the method of distributing intestates' estates.

Intestates es-
tates how dis-
tributed.

a [The mode in
which the child
so advanced
shall account, is
prescribed by
1792, c. 36+.]

1. *Be it enacted by the Governor, Council and Assembly, and by the authority of the same,* That all and every person and persons to whom administration on the estate of any person deceased shall hereafter be granted, shall distribute the surplus of such estate in the manner following, that is to say : one-third part of the said surplus to the wife of the intestate, and all the rest by equal portions, to and amongst the children of such person dying intestate, and such persons as legally represent such children, in case any of the said children be then dead, other than such child or children (not being heir at law) (a) who shall have any estate by the settlement of the intestate, or shall be advanced by the intestate in his lifetime by portion or portions, equal to the share which shall by such distribution be allotted to the other children to whom such distribution is to be made : And in case any child, other than the heir at law, who shall have any estate by settlement from the said intestate, or shall be advanced by the said intestate in his lifetime, by portions not equal to the share which shall be due to the other children by such distributions as aforesaid, then so much of the sur-

plus of the estate of such intestate to be distributed to such child or children as shall have any land by settlement from the intestate, or were advanced in the life-time of the intestate, as shall make the estate of all the said children to be equal, as near as can be estimated; but the heir at law, notwithstanding any land that he shall have, by descent or otherwise, from the intestate, is to have an equal part in the distribution with the rest of the children, without any consideration of the value of the land which he hath by descent, or otherwise, from the intestate: And in case there should be no children, nor any legal representatives of them, then one moiety (a) of the said estate to be allotted to the wife of the intestate; the residue of the said estate to be distributed equally to every of the next of kin of the intestate who are in equal degree, and to those who legally represent them: *Provided*, That there be no representatives admitted amongst collaterals after brothers' and sisters' children. And in case there be no wife, then all the said estate to be distributed equally to and amongst the children; (b) and in case there be no child, then to the next of kindred, in equal degree, of, or unto the intestate, and their legal representatives as aforesaid, and in no other manner whatsoever. And if after the death of the father, any of his children shall die intestate, without wife or children, in the life-time of the mother, every brother and sister, and the representative of them, shall have an equal share with the mother of the estate of the child or children so dying intestate.

a [One third by 1784, c. 204, s. 8.]

b [Illegitimate children admitted to a distribution of their mother's property, by 1799, c. 522.]

CHAP. 80.

An act for the relief of such persons as have suffered, or may suffer, by not having had their deeds or mesne conveyances proved and registered within the time heretofore appointed for such purposes.

1. WHEREAS by an act passed at Newbern, in the year of our Lord, one thousand seven hundred and fifty-four, entitled, *An act for the relief of such persons as have suffered, or may suffer, by not having had their deeds and mesne conveyances registered and proved within the time heretofore appointed for such purposes; and to prevent disputes and law-suits concerning lands; all deeds or mesne conveyances for any lands, tenements, or hereditaments within this province, were to be acknowledged or proved according to the directions of that act, and delivered to* [See 1764, c. 73, & 1770, c. 90.]

the register of the counties wherein they are respectively situated, within the space of two years from the respective dates thereof; and many persons, through ignorance of the purport of the said law, or other causes, have neglected to have their deeds and mesne conveyances proved and registered according to the directions of the said act: For remedy whereof,

Further time allowed for proving and registering deeds.

2. *Be it enacted by the Governor, Council and Assembly, and by the authority of the same,* That all deeds and mesne conveyances of lands, tenements and hereditaments, not already registered, acknowledged, or proved, shall and may, within eighteen months after the passing this act, be acknowledged by the grantor or grantors, his or their agents or attornies, or proved by one or more of the subscribing witnesses to the same, and tendered or delivered to the registers of the counties where such lands, tenements or hereditaments are respectively situated: And all deeds and mesne conveyances whatsoever, which shall be acknowledged or proved according to the directions of this act; and also, such as have been heretofore proved or recorded by the clerk, and registered by the register of any county, wherein the lands and tenements mentioned in the same lie or are situate, though not within two years after the date of the respective conveyance, shall be good and valid in law, and shall enure and take effect, as fully and effectually, to the use and behoof of the grantees, their heirs and assigns, and those claiming under them, as if such deeds and conveyances were acknowledged, or proved and registered, agreeable to the direction of any act of Assembly heretofore made.

Deeds already proved and registered, though not within 2 years, good and valid.

CHAP. 81.

An act to prevent the inhabitants of South-Carolina driving their stocks of cattle from thence to range and feed in this province, and other purposes.

1. WHEREAS of late years many of the inhabitants of South-Carolina have made it a practice to fix cowpens, and settle people with large stocks of cattle (though they are not owners of any land) in this province, which destroys the range, and greatly injures the poor inhabitants of several of the counties bordering on South-Carolina:

2. *Be it therefore enacted by the governor, council, and*

assembly, and by the authority of the same, That from and after the passing of this act, it shall not be lawful for any person, who is not an inhabitant of this province, to fix any cowpen, or settle or range any stock or number of cattle in this province; nor shall any inhabitant, on any account whatever, take charge of, or receive under his or her care or custody, in order to range or raise stock, from any number of cattle belonging to an inhabitant of any other province, or wherein a resident of any other province hath any share or interest, unless such owner or keeper shall be legally possessed, in his or her own right, of a sufficient quantity of land for feeding the said cattle on, allowing one hundred acres of land for every ten head of cattle: and that the owner or keeper of such cattle shall record in the inferior court of the county where he or she intends to range cattle, the number of acres he or she is legally possessed of, and whether it is by patent, will, deed, or otherwise, with the date of such patent, will, deed, or other instrument; and on any trial for a breach of this law, such record shall be deemed good evidence against the owner or keeper of cattle, as to the number of acres such person possesses: and if any person contrary to this act shall presume to range, or keep a larger number of such cattle than ten head to every hundred acres of land he, she, or they, shall be legally possessed of as aforesaid, and so in proportion; all the cattle exceeding that proportion shall be forfeited and sold by the sheriff of the county wherein the said cattle were ranged or kept, on legal proof made to the inferior court of the same county, by any freeholder thereof; the said freeholder giving the owner or keeper of the said cattle five days previous notice, that at the next inferior court to be held for the said county, he intends to lodge a complaint against such person, for ranging or keeping a greater number of cattle than he is by law entitled to range or keep in the said county; and on proof of service of the said notice personally, or by having a copy of the same left at the place of such person's residence, the said inferior court shall, without delay, proceed to hear the complaint in a summary way, without the solemnity of a jury, and determine according to evidence, and the right of the matter before them: and if judgment pass for the complainant, the clerk shall forthwith issue an order to the sheriff for the sale of all such cattle, agreeable to the judgment; which sheriff shall, without delay, either by

Persons not inhabitants of this province, prevented from ranging stocks therein, c.

[See 1715, c. 8—1729, c. 19—1795, c. 49.]

None to take charge of cattle or non residents unless the owner, &c. possess a certain proportion of land.

Land to be recorded in the inferior court.

Penl. for breach of this act and manner of recovery.

himself or deputy, execute the command of the said order, and return the money to the next court; one third part thereof to be paid to the complainant, one third part thereof to be paid to the churchwardens of the parish, for the use of the poor, (being parishioners) and the remaining third part to be paid to the former owner of the cattle, if called for within twelve months, otherwise to be applied towards the contingent charge of the county.

Persons having the care of a greater number of cattle on any range, than this act allows, to remove the overplus cattle.

3. *And be it further enacted by the authority aforesaid,* That any person now having the care of any stock or number of cattle, the property of an inhabitant of any other province, or wherein an inhabitant of any other province hath any share or interest, exceeding ten head of cattle to every hundred acres of land such owner or keeper shall be possessed of as aforesaid; the person in whose care the said cattle are, shall, within six months next after the passing of this act, remove, or cause the said overplus cattle to be removed out of the said county; under the penalty of forfeiting the same, by judgment of the inferior court of the county; under the same rules and regulations aforesaid.

Certificate necessary to entitle a person to drive cattle into the province, or from one county to another.

[No cattle to be driven from S. Carolina or Georgia to this state, between the 1st of April & the 1st of November, nor in the state from the long leaf pine to the highlands, 1795, c. 439.]

4. And whereas much loss or damage has often ensued to the inhabitants of this province, from distempered cattle being drove through the same: For remedy whereof, *Be it enacted by the authority aforesaid,* That from and after the passing of this act, no person or persons whatever, shall drive any cattle into this province, or from one county to another, without having with him or them a certificate or certificates, under the hand and seal of a justice or justices of the peace of the county where the cattle were severally and respectively purchased or brought; setting forth, that oath had been duly made by the respective owners, that such cattle, at the time of the purchase or removal, were sound, and free from any distemper or infection; and that no distemper or infection were known to be among cattle at that time within five miles from the place whence they came; and shall likewise mention the mark and brands of the said cattle.

Penalty for driving cattle without a certificate, as this act directs.

5. *And it is further enacted,* That every person or persons who shall, after the passing of this act, drive any cattle into this province, or from one county to another within the same, without such certificate or certificates as aforesaid, shall forfeit and pay for every steer, bull, cow, calf, or heifer, respectively, for which he shall

have no certificate, the sum of forty shillings : to be recovered by a warrant before any justice of the peace of the county where such cattle shall then be, and be levied on the body, goods or chattels of the delinquent or delinquents, for the use of the county : And every person driving cattle as aforesaid, is hereby required and directed to produce a certificate or certificates as aforesaid, at the request of any person, a resident in the county wherein such cattle are ; and upon his refusal so to do, on complaint thereof made to any justice of the peace in the said county, such justice is hereby empowered and directed, to issue a warrant to bring such drover or drovers before him ; who, for every such refusal, shall forfeit and pay the sum of twenty shillings ; and till the same is paid, the said justice shall commit the offender to the gaol of the county, or issue an execution against his goods and chattels, as such justice thinks most expedient ; which forfeiture shall be applied to the use of the county, and accounted for at the next inferior court.

And for not producing it when required.

6. *And it is hereby further enacted*, That in case any cattle hereafter shall be suspected to have any distemper, any two justices of the peace, and one freeholder, are hereby empowered and directed, to enquire into the same ; and on due proof thereof made, shall make such order therein, as may best tend to prevent the infection spreading.

Distemper among cattle, or, der to be taken for preventing its spreading.

CHAP. 82.

An act for ascertaining the boundary lines between the counties of New-Hanover and Duplin.

1. WHEREAS disputes daily arise between the inhabitants of New-Hanover and Duplin, by reason of the boundary line not being sufficiently ascertained :

2. *Be it therefore enacted by the Governor, Council and Assembly, and by the authority of the same*, That the honorable John Sampson, esquire, John Ashe, Felix Kennon, and Alexander Lillington, esquires, are hereby appointed commissioners for running out the dividing line between the said counties of Duplin and New-Hanover ; which said commissioners, or any three of them, shall meet on some time within six months after the passing of this act, and shall run and lay off the boundaries between the said counties, in the following manner, to wit : That Rock-

Commissioners appointed for running the dividing line between Duplin and New Hanover.

fish creek shall be the boundary, from the mouth thereof to where Doctor's creek branches from the same; then up Doctor's creek, one mile above the house of Mr. George Maires; thence running a direct line to the corner made by Arthur M. Coy, on South river; and the said line when run, shall forever after be deemed the boundary line between the said counties of New-Hanover and Duplin.

SIGNED BY

WILLIAM TRYON, *Esq. Governor.*

JOHN RUTHURFURD, *President.*

JOHN HARVEY, *Speaker.*

Read three times, and ratified in open Assembly, }
the 1st day of December, 1766. }

ANNO REGNI GEORGII III.

OCTAVO.

Wm. Tryon,
Esq. governor.

At an Assembly, begun and held at Newbern, the third day of November, in the seventh year of the reign of our sovereign lord George the third, by the grace of God, of Great-Britain, France, and Ireland, king, defender of the faith, &c. and in the year of our Lord one thousand seven hundred and sixty-six; and from thence continued, by prorogation, to the fifth day of December, in the year of our Lord one thousand seven hundred and sixty-seven: being the second session of this present Assembly.

CHAP. 83.

An act for regulating ordinaries and restraint of tippling-houses.

Ferry keepers
to provide en-
tertainment for
travellers.

1. *And be it further enacted by the authority aforesaid,* That from and after the passing of this act, all keepers of public ferries or bridges within this province, where the ferriage or bridge toll is above four pence, proclamation money, for a man and horse, shall be obliged to furnish all travellers with entertainment at tavern rates, and shall take out license (a) for that purpose; and if any keeper of any such public ferry or bridge shall refuse or neglect to furnish such entertainment, or to take out such license, such ferry or bridge keeper shall forfeit and pay for each offence the sum of ten pounds, proclamation money, to any person who shall sue for the same.

2. And to the end that ordinaries, or houses of public entertainment, may be the more readily and generally

a [For the mode
of doing so, see
1798, c. 501, s. 2
—1816, c. 906—
1818, c. 984.]

Ordinary keep-
ers to set up

known by travellers and others : *Be it therefore further enacted by the authority aforesaid,* That every person who shall obtain a license agreeable to the directions of this act, from and after the first day of March next, shall, within one month after obtaining license as aforesaid, set up, or cause to be set up, in public view, at his dwelling-house, or the house where such ordinary shall be kept, a sign, with an inscription thereon, denoting the same to be an ordinary, or house of public entertainment, under the penalty of forfeiting forty shillings, proclamation money, for every month the said ordinary, or house of entertainment, shall be kept, without having a public sign set up as aforesaid. signs at their houses.

3. *And be it further enacted by the authority aforesaid,* That all the penalties and forfeitures in this act, the method of recovering and applying whereof are not particularly directed, shall be one-half to the governor or commander in chief for the time being, the other half to him or them who shall sue for the same ; to be recovered with costs, before any jurisdiction having cognizance thereof. Penalties & forfeitures how recovered and applied.

4. *And be it further enacted by the authority aforesaid,* That all and every act and acts, and every clause and article thereof, heretofore made, so far as relates to regulating ordinaries and restraint of tippling houses, or to any other matter or thing whatsoever, within the purview of this act, is, and are hereby repealed and made void, to all intents and purposes whatsoever. Repealing clause.

CHAP. 84.

An act for annexing part of Northampton county to the county of Bute.

1. WHEREAS the inhabitants of the upper or westernmost corner of Northampton county, labour under great inconveniencies in attending the courts, and other public meetings of the said county, at the court-house thereof ; and being more convenient for those purposes to the county of Bute, are desirous of being annexed thereto :

2. *Be it enacted by the Governor, Council and Assembly,* County divided, *and by the authority of the same,* That Thomas Eaton, Willie Jones, and Benjamin Person, esquires, be and they are hereby appointed commissioners : and they, or a majority of them, are required and directed, within

three months after the passing of this act, to run and mark (or cause the same to be done) a line from Roanoke river bank, opposite the mouth of Stone-house creek, a due north course to the dividing line between this province and the colony of Virginia; and all that part bounded to the eastward, by the line above directed to be marked, and to the northward by the Virginia line, to where it crosses Roanoke river, shall be, and is hereby annexed to, and made part of the county of Bute; and the inhabitants thereof shall be subject and liable to the same rules, orders, taxes, and privileges, as any other of the inhabitants of the said county of Bute.

SIGNED BY

WILLIAM TRYON, *Esq. Governor.*JAMES HASELL, *President.*JOHN HARVEY, *Speaker.*

Read three times and ratified in open Assembly, }
the 15th day of Jan. A. D. 1768. }

ANNO REGNI GEORGII III.

NONO.

Wm. Tryon,
Esq. governor.

At an Assembly, begun and held at Newbern, the third day of November, in the seventh year of the reign of our sovereign lord George the third, by the grace of God, of Great-Britain, France, and Ireland, king, defender of the faith, &c. and in the year of our Lord one thousand seven hundred and sixty-six; and from thence continued by prorogation, to the seventh day of November, in the year of our Lord one thousand seven hundred and sixty-eight: being the third session of this present Assembly.

CHAP. 85.

An act to relieve such persons who have purchased lands sold by execution, and have not obtained titles to the same.

1. WHEREAS by an act of the General Assembly, passed at Wilmington, in the year one thousand seven hundred and sixty-four, declaring lands, and other real estate in this province, liable for the payment of debts, and subject to be taken in execution and sold for that purpose, and conveyances under such sale to be made by the sheriff selling the same; and in case of his death, or removal from office, the conveyance to be made by his successor in office: And whereas many tracts of land, in

virtue of the said act, have been formerly taken in execution and sold; but by reason of the death of the sheriff selling the same, and doubts of the succeeding ones, titles have not been made to the fair and open purchasers, who have paid the consideration of such sales, at the time of selling, which doubts have arisen from the publication here of his majesty's royal disallowance of that act: That the fair purchaser may be remedied herein,

2. *Be it enacted by the governor, council and assembly, and by the authority of the same,* That any person or persons who heretofore, and until the publication of the disallowance of the act aforesaid, have actually purchased any lands sold by any sheriff as aforesaid, and have *bona fide* paid the full consideration money for the same to the sheriff, for the purposes for which the same was sold, and hath not from the obstructions aforesaid, obtained a proper conveyance of the title of such lands from the sheriff, according to the directions of the said act, may, and are, hereby authorised, to demand of the sheriff now in office, or the sheriff for the time being, of the county wherein such lands lie, a proper deed or conveyance for the same lands: And such sheriff (*a*) is hereby authorised and required, on application of the purchaser as aforesaid; and in case of his or her death, on the application of the heir, executors, legatees, or assignees of said deceased (where of right it ought to be done) to make such sufficient deed or conveyance in law, of the lands so sold, as the sheriff at the time of making the sale, in virtue of the act aforesaid, could or ought to have done; and all deeds or conveyances made and executed as aforesaid, in virtue hereof, are hereby declared to be good and valid; and shall be as effectual in law for conveying the legal title of the lands therein mentioned to the purchaser thereof, his or her representative as aforesaid, as if the same conveyance had been made at the time of the sale on execution, by the sheriff selling the same.

Sales of lands sold on execution declared good.

a [A sheriff or coroner, though out of office, may make a deed for property sold, and if he die or remove from the state, his successor may, 1784, c. 223, s. 10—1799, c. 538, s. 1.]

CHAP. 86.

An act to amend an act, entitled, An act to restrain the keeping of too great a number of horses and mares, and for amending the breed.

1. WHEREAS by an act of Assembly, passed at [See 1723, c. 16.] Edenton, on the twenty-third day of November, in the year of our Lord one thousand seven hundred and

twenty-three, entitled, an act to restrain the keeping of too great a number of horses and mares, and for amending the breed; it is enacted, among other things, that no person whatsoever shall suffer, or let go at large, any stone horse or horses, of two years old, unless such horse or horses shall be at least thirteen hands in height, under certain penalties and forfeitures in said act specified: and whereas the suffering horses of that age and size is found prejudicial to the breed:

Stone horses under 14 hands, not to run at large.

a [No stone horse shall be suffered to go at large, 1801, c. 594.]

2. *Be it enacted by the governor, council, and assembly, and by the authority of the same,* That from and after the passing of this act, no person whatsoever in this province shall suffer, or let go at large, any stone horse or horses, of two years old or upwards, unless such horse or horses (a) shall be at least fourteen hands in height, upon penalty of forfeiting such horse or horses, or the sum of twenty shillings, to the taker-up of such stone horse, provided the same be found running at large not within the confine of any fence, water, marsh, or swamp; any thing contained in the aforesaid act, to the contrary, notwithstanding.

CHAP. 87.

An act for dividing the county of Mecklenburg, and other purposes.

1. WHEREAS by reason of the large extent of the county of Mecklenburg, it is greatly inconvenient for the inhabitants to attend the courts of the aforesaid county, and other public duties by law required:

2. *Be it therefore enacted by the Governor, Council and Assembly, and by the authority of the same,* That from and after the tenth day of April next, the said county of Mecklenburg shall be, and is hereby divided into two distinct counties and parishes, by a line beginning at earl Granville's line, where it crosses the Catawba river; and the said river to be the line to the South-Carolina line; and that all that part of the said county which lies to the eastward of the said dividing line shall be a distinct county and parish, and remain and be called by the name of Mecklenburg county, and Saint Martin's parish; and that all that part of the county lying to the westward of the said dividing line, shall be one other distinct county and parish, and be and remain by the name of Tryon county, and Saint Thomas' parish.

Mecklenburg divided, and Tryon county erected.

CHAP. 88.

An act to amend an act, entitled, an additional act to an act, entitled, an act to prevent killing deer at unseasonable times; and for putting a stop to many abuses committed by white persons under pretence of hunting. [See 1738, c. 22 —1745, c. 38.]

1. WHEREAS by the before recited act, persons who have no settled habitation, or not tending five thousand corn hills, are prohibited from hunting, under the penalty of five pounds, and forfeiture of his gun; which, by experience, has been found not to answer the purposes intended by the said act; many disorderly and dissolute persons, having no habitation of their own, still continue to hunt on the king's waste, and the lands of other persons, and kill deer, and leave the carcasses in the woods; by which means the wolves, bears, and other vermin, are fed and raised; to the great damage of many of the inhabitants of this province; and the fines being difficult of recovery, by means of persons, having no property of their own, assembling in great numbers, and camping in the woods, and kill deer, burn and destroy the range, burn fences, and commit many other injuries to the inhabitants of this province; and associate, for the mutual protection and defence of each other, against any person or persons who shall attempt to execute any precept on any of them: For remedy whereof;

2. *Be it enacted by the governor, council, and assembly, and by the authority of the same,* That from and after the first day of January next, no person whatever (masters of slaves excepted) not having a freehold of one hundred acres of land within this province, or tending ten thousand cornhills, at least, five feet distance each, shall hunt or kill deer; under the penalty of ten pounds, proclamation money, for every offence; and moreover shall forfeit his gun, or the value thereof; to be recovered by action of debt, bill, plaint, or information, in any court of record within this province, by any person who will prosecute for the same; wherein, upon conviction, over and above the said penalty and forfeiture as aforesaid, the defendant shall be committed to gaol, by order of the court; there to remain, without bail or mainprize, for one month.

What persons
allowed to hunt.

3. *And be it further enacted by the authority aforesaid,* That upon action of debt, information or indictment, being prosecuted for the above penalty, the sheriff who shall execute the writ, shall take two sufficient securities for the defendant's appearance, at the court to which the

Special bail to
be given in ac-
tions on this
act.

same, by the tenor thereof, is made returnable; which bail so taken, shall be subject and liable as in other cases; and on failure thereof, or an exception being taken to the said bail, the same shall be deemed insufficient, then, and in that case, the sheriff shall stand and be taken as special bail.

Proviso, for sheriff to surrender the principal.

Proviso, for overseers to hunt.

Defendant failing to give bail, to be committed to the superior court gaol.

Sheriff's fees.

Penalty for hunting on any person's lands without leave.

4. *Provided nevertheless*, That the sheriff may surrender the defendant in discharge of himself, at any time before final judgment had against the defendant.

5. *Provided also*, That nothing herein contained, shall extend to bar or hinder an overseer of a slave or slaves from hunting and killing deer with a gun on his employers lands, or the waste lands of the king, or lord Granville, within five miles of the residence of such overseer.

6. And whereas by reason of the insurrections, of many illegal proceedings of sundry of the inhabitants of this province, the county gaols are become almost useless; many persons who are committed thereto being released by force, the said gaols being remote from the residence of the sheriffs, who might prevent such breakings as aforesaid, by raising sufficient force for that purpose: Therefore. *Be it enacted by the authority aforesaid*, That upon suit being commenced on action of debt, information, &c. in a superior court, if the defendant shall fail to give such security as aforesaid, that then the sheriff shall commit the defendant to the gaol of the superior court for the district to which the same is made returnable.

7. *And be it further enacted by the authority aforesaid*, That the sheriff shall have, for the services he shall perform in a suit brought as aforesaid, the same fees and allowances as in other cases on action brought, information, or indictment prosecuted, and subject and liable for taking greater fees, in the same manner as in other cases.

8. *And be it further enacted by the authority aforesaid*, That no white person whatsoever shall, on any pretence, presume to hunt with dogs, or otherwise, or drive or kill any deer or game on any person's lands, without leave of the owner of such land; under penalty of five pounds, proclamation money, for each offence; to be recovered by action of debt, in the inferior court of the county

wherein the offence shall be committed, by the owner of the said land.

SIGNED BY

WILLIAM TRYON, *Esquire, Governor.*

JAMES HASELL, *President.*

JOHN HARVEY, *Speaker.*

Read three times, and ratified in open Assembly, 2
the 5th day of December, 1768. 5

ANNO REGNI GEORGII III.

UNDECIMO.

At an Assembly begun and held at Newbern, the fifth day of December, in the eleventh year of the reign of our Sovereign Lord George the Third, by the grace of God, of Great-Britain, France and Ireland, king, defender of the faith, &c. and in the year of our Lord one thousand seven hundred and seventy : Being the first session of this present Assembly.

Wm. Tryon,
Esq. governor.

CHAP. 89.

An act to amend an act, entitled, An act for appointing sheriffs, and directing their duty in office. [See 1777, c. 118—1779, c. 156.]

1. WHEREAS many hardships and inconveniencies have arisen from sheriffs leaving this province before they had accounted for the public, county and parish taxes, whereby their securities have become liable for the same; and no provision having been made in the said act for the relief of such securities :

2. *Be it therefore enacted by the Governor, Council and Assembly, and by the authority of the same,* That every sheriff who hath already removed himself, or may hereafter remove himself out of this province, and shall not have accounted for the public, county, and parish taxes, whereby the securities of such sheriffs have or may become liable for the same, it shall and may be lawful for such securities, (a) their heirs, executors, or administrators, to receive and collect all the arrears of taxes which ought to have been collected by such sheriffs; and if any person or persons liable to pay such taxes, shall or may fail to pay the same to the sheriffs' securities as aforesaid, it shall and may be lawful for such securities, their heirs, executors or administrators, to make distress for all such arrears of taxes, in the same manner as sheriffs are by law empowered to distrain.

Sheriffs removing themselves before finishing their collections, their securities may collect the arrears of taxes.

a [The securities may also collect if the sheriff die shortly before the time for collection, 1784, c. 219, s. 8.]

To make no
distress, until
one month's no-
tice.

3. *Provided always*, That no such distress shall be made until public notice be first given to the inhabitants of the county, by advertising the same at the court-house and several chapels within said county, at least one month next before such distress is intended to be made.

CHAP. 90.

An act for the relief of such persons who have or may suffer by their deeds and mesne conveyances not being proved and registered within the time heretofore appointed by law.

[See 1766, c.
80—1773, c.
102.]

Further time al-
lowed for re-
gistering deeds.

1. WHEREAS many persons, through ignorance of the law, have neglected to have their deeds and mesne conveyances proved and registered according to the directions of the several acts of assembly, in such case made and provided : For remedy whereof,

2. *Be it enacted by the Governor, Council and Assembly, and by the authority of the same*, That all deeds and mesne conveyances of lands, tenements, and hereditaments, not already registered, acknowledged or proved, shall and may, within two years after the passing of this act, be acknowledged by the grantor or grantors, his or their agents or attornies, or proved by one or more of the subscribing witnesses to the same, and tendered or delivered to the registers of the counties where such lands, tenements or hereditaments are respectively situated : And all deeds and mesne conveyances whatsoever which shall be acknowledged or proved according to the directions of this act, though not within two years after the date of the respective conveyances, shall be good and valid in law, and shall enure and take effect, as fully and effectually, to the use and behoof of the grantees, their heirs and assigns, and those claiming under them, as if such deeds and conveyances were acknowledged or proved, and registered agreeable to the directions of any act of assembly heretofore made.

CHAP. 91.

An act for the relief of such persons who have or may suffer by the loss of the records in Bladen county, and for the election of vestrymen for the parish of St. Martin's.

1. WHEREAS the house of Mr. Maturin Colville, clerk of the court, and register for the county of Bladen, and the records of the said county, were lately

burnt and consumed ; whereby the estates of many orphans, and other persons, may be very much perplexed and prejudiced : For remedy whereof,

2. *Be it enacted by the Governor, Council and Assembly, and by the authority of the same,* That from and after the passing of this act, the copy of any judgment, order, settlement of orphans, and their estates, or other record, or other matter or thing, transacted or done in the said court, or register's office, in the county of Bladen, attested under the hand of the clerk or register who recorded the same (in such case where the original is destroyed,) shall and may be given in evidence in any dispute or controversy, in any court whatsoever, and shall have the same weight and credit given to it as the original record might, or ought to have, could it have been produced.

Copies of records, &c. to be given in evidence, where originals are lost.

3. *And be it further enacted by the authority aforesaid,* That where any persons have neglected taking copies from the clerk's office, or may have lost them, or have neglected taking their deeds out of the register's office, and are desirous to perpetuate the memory of such judgment, order, probate of any will, settlement of an orphan's estate, deed, mortgage, bill of sale, or any other matter or thing transacted and done in the said county court or register's office ; it shall and may be lawful, upon the deposition of one or more creditable person or persons, taken in writing, and sworn to in open court, at any time within three years after the passing of this act, of the contents or substance of such judgment, order, probate of a will, settlement of an orphan's estate, deed, mortgage, bill of sale, or other instrument of writing whatsoever, and that the original record was burnt as aforesaid : Which deposition shall be recorded in the minutes of the court, certified by the clerk, and registered in the register's office, in the said county ; for which service the said clerk or register shall be allowed a sufficient reward, at the discretion of the justices of the county court ; to be paid out of the county tax.

Where originals are lost, depositions of records to be good.

4. *And be it further enacted,* That such record so made, shall and may, at all times hereafter, be pleaded and given in evidence, and have the same validity, in any cause or court whatsoever, as the original would have, could it have been produced.

Such records to be given in evidence.

CHAP. 92.

An act for the better settling, regulating, and improving the town of Beaufort, in the county of Carteret; and for annexing Occacock island to the said county.

Part of Hatteras banks added to Carteret county.

AND whereas part of Hatteras Banks, adjoining the bounds of Currituck county, from the place where Hatteras Inlet formerly was, and extending westward to Occacock Inlet, is not included in any county within this province; by which means the inhabitants thereof are not liable to pay any taxes, or perform any public duties whatsoever: For remedy whereof, *Be it enacted by the authority aforesaid*, That from and after the passing of this act, all that part of the said banks from the low beach, which runs across the same to the sea side, and where Hatteras Inlet formerly was, extending westward to Accomack Inlet, shall be forever hereafter annexed to the county of Carteret, and shall be held, taken, and deemed as part of the same; and the inhabitants thereof shall be liable and subject to the same duties, taxes, and impositions, and entitled to the same privileges, benefits, and advantages, as the other inhabitants of the said county of Carteret.

CHAP. 93.

An act for erecting part of Johnston, Cumberland and Orange counties, into a separate and distinct county, by the name of Wake county and St. Margaret's parish.

Wake county erected.

1. WHEREAS the large extent of the said counties of Johnston, Cumberland and Orange, renders it grievous and burthensome to many of the inhabitants thereof to attend the courts, general musters, and other public meetings therein:

2. *Be it enacted by the Governor, Council and Assembly, and by the authority of the same*, That from and after the twelfth day of March next after the passing of this act, the said counties of Johnston, Cumberland and Orange, be divided by the following lines, *that is to say*, beginning at Edgcomb line on Mocoso swamp, a mile above James Lea's plantation, running a direct line to Neuse river, at the upper end of John Beddingfield's plantation; then to David Mimm's mill creek, between Mimm's mill and Tanner's old mill; then the same course continued to the ridge which divides Cumberland and Johnston counties; then a strait line to Orange line, at

the lower end of Richard Hill's plantation, on Buckhorn; then the same course continued five miles; then to the corner of Johnston county on Granville line; then with the same line and Bute line to Edgcomb line, and along Edgcomb line to the beginning; be thenceforth erected into a distinct county and parish, by the name of Wake county and St. Margaret's parish.

CHAP. 94.

An act for erecting a new county between the towns of Salisbury and Hillsborough, by taking part of the counties of Rowan and Orange.

1. WHEREAS the great extent of the respective counties of Rowan and Orange, render the attendance of the inhabitants of part of Rowan county, and the inhabitants of the upper part of Orange county, to do public duties in their respective counties, extremely difficult and expensive: For remedy whereof,

2. *Be it enacted by the governor, council, and assembly, Guilford county erected.* and by the authority of the same, That a line beginning at a point twenty-five miles due west of Hillsborough, running thence north to the Virginia line, then west to a point due north of the Painted Springs, then south to Anson, line, then along Anson and Cumberland lines to a point due south of the beginning, then north to the beginning, be erected into a distinct county by the name of Guilford county, and Unity parish.

CHAP. 95.

An act for establishing a new county between Campbleton and Hillsborough, by taking the southern part of the inhabitants of Orange county, and by erecting the same into a distinct county, by the name of Chatham county, and St. Bartholomew parish.

1. WHEREAS the great extent of the county of Orange render the attendance of the inhabitants of the southern part thereof to do public duties extremely difficult and expensive: For remedy whereof,

2. *Be it enacted by the governor, council, and assembly, Chatham county erected.* and by the authority of the same, That from and after the first day of April next, the inhabitants of the county of Orange, lying to the south of a point sixteen miles due south of Hillsborough, and bounded as follows, to wit, beginning at the aforesaid point, running thence due west to Guilford county line; thence south along Guilford

county line to Cumberland county line; thence along Cumberland and Wake county lines to a point due east of the beginning; thence due west to the beginning, be erected into a distinct county by the name of Chatham county, and St. Bartholomew parish.

CHAP. 96.

An act for the more advantageous and easy manner of obtaining partitions of lands, in coparcenary, joint tenancy, and tenancy in common. (a)

1. WHEREAS the proceedings by the common law upon writs of partition between coparceners, joint tenants, and tenants in common, are tedious, chargeable, and often ineffectual; and whereas the lands belonging to coparceners, joint tenants and tenants in common, frequently lie in different counties and districts, and great part of the lands in this province are so extremely poor and barren that they will not admit of a minute partition as in England, where every single acre is separately of real value, by reason of which divers persons having undivided parts or purparts are greatly oppressed and prejudiced, and the premises are frequently wasted or destroyed, or lie uncultivated and unmanured, so that the profits of the same are totally or in a great measure lost: For remedy whereof,

2. *Be it enacted by the Governor, Council and Assembly, and by the authority of the same,* That from and after the passing of this act the demandant for the partition of any lands, tenements, or hereditaments, shall file his or her declaration in the office of the superior court where the suit shall be brought, whereupon a summons or sum-

a [All the objects of this law are provided for in a more summary and effective manner by subsequent acts of assembly; but as many estates have been divided in pursuance of the directions of this act, it was thought better to retain it as it may be useful in the investigation of ancient titles. The acts on the same subject are

1784, c. 22.

1787, c. 274.

1789, c. 209.

1795, c. 447.

1801, c. 588.

1803, c. 636.

1812, c. 847.

1818, c. 982.

1819, c. 1022.]

Manner of obtaining partitions in coparcenary.

monses, together with a copy or copies of such declaration, shall be issued by the clerk of such court, directed to the tenant or tenants to the action, and returnable to the court from whence the same issued, commanding him, her or them, to appear thereat; and if upon the service of such summons or summonses, the tenant or tenants to the action shall fail to appear or plead, the court may proceed to examine the demandant's title, and quantity of his part and purpart, and accordingly as they shall find his right part and purpart to be, they shall for so much give judgment by default, and award partition to be made, according to the rules hereafter mentioned, whereby such proportion, part and purpart, may be set out severally; which having executed, after giving ten days' notice to the other parties, or if they cannot be found, to the occupiers or tenants in actual possession of the premises (where such occupier or tenant in possession is not demandant in the action) and returned, and thereupon final judgment entered, shall be good, and conclude all persons whatsoever, after notice as aforesaid, whatever right or title they have, or may at any time claim to have, in any of the messuages, lands, tenements, and hereditaments, mentioned in the said judgment and writ of partition, although all persons concerned are not named in any of the proceedings, nor the title of the tenants truly set forth.

3. *Provided always*, That when the tenant or tenants to the action live out of this province, that then and in such case a service of the summons, with a copy of the declaration, upon the lawful attorney of such absent tenant or tenants, shall be deemed a good service; and *Provided also*, that in all such cases when the tenant or tenants to the action live out of this province as aforesaid, the court shall, before any judgment by default be entered as aforesaid, allow an imparlance to the next succeeding term, or further, as the case may reasonably require, in order that such absent tenant or tenants may have notice to appear and defend the action, if they think fit.

Tenants out of the province, imparlance to be allowed.

4. *Provided always*, That such person or persons concerned, or any of them, against whom, or their right or title, any judgment by default shall be given, be at the time of such judgment under the age of twenty-one years, feme covert, of unsound mind and memory, or absent out of this province, without any attorney, lawfully and fully empowered, residing therein, may, within the space of five years after the removal of such disabili-

Proviso, for infants, feme coverts, &c.

ty, apply themselves by motion to the court where such judgment is entered: And if upon such motion they shall shew a good and probable matter, in bar of such judgment, or that the demandant hath not title to so much as he hath recovered; then, and in such case, the court may suspend such judgment, and admit the tenant or tenants to appear and plead, and the cause shall proceed according to due course of law, as if no such judgment had been given; and if the court, upon hearing thereof, shall adjudge for the first demandant, then the first judgment shall stand confirmed, and be good against all persons whatsoever, except such other person as shall be absent or disabled as aforesaid; and the person or persons so appealing, shall be awarded thereupon to pay costs, or if within such time or times as aforesaid, the persons concerned admitting the demandant's title, part or purpart, shall shew to the court any inequality in the partition, the court shall award a new valuation, and make partition in presence of all parties concerned (if they will appear) notwithstanding the return and filing upon record of the former valuation; which said second valuation and partition returned and filed, shall be good and firm for ever against all persons whatsoever, except as before excepted.

Manner of proceeding, where lands lie in different counties.

5. *And be it further enacted by the authority aforesaid,* That upon any judgment being given for such demandant, and the messuages, lands, tenements, and hereditaments, in such judgment mentioned, happen to lie in different counties, the courts in which such judgment shall be obtained are authorised and empowered, and they are hereby required, to issue writs, directed to the sheriffs of the several counties where the lands, tenements, and hereditaments lie, commanding them, that by inquisition, in due form of law, they shall cause the lands mentioned in such judgment to be valued, and such valuation to be returned with the writs, under the hands and seals of those by whom inquisition shall be made; upon which the court shall proceed to make partition, giving the demandant his part and purpart in one county, unless where the lands, tenements, and hereditaments, lie on both sides of a water which divides two counties, and it may be necessary, for the advantage of the different parties, that such lands should not be separated, or unless it should prove otherwise injurious to the parties, in which case the court shall make partition in the most equitable manner they can.

6. *And be it further enacted by the authority aforesaid,* That where it shall be found necessary, in order to make a more equal partition, that any of the lands, tenements, or hereditaments, mentioned in such judgment, should be divided into two or more parts, the court shall order a writ or writs of partition to issue to the county or counties where such lands, tenements, and hereditaments are situated, commanding the sheriff or sheriffs of such county or counties to make partition of such lands, tenements and hereditaments, into such proportions and value only as shall be necessary to make, as near as may be, an equal partition of the whole messuages, lands, tenements, and hereditaments, mentioned in such judgment, and order the sheriffs of such counties respectively to put the demandant in possession of his or her particular part, purpart, or share thereof; which valuation and partition shall be returned by the sheriff or sheriffs as aforesaid, to remain among the records of the court.

Where they are to be divided in two or more parts.

7. *And be it further enacted by the authority aforesaid,* That where the lands, tenements and hereditaments mentioned in any such suit, lie in different districts, the court to which such suit shall be brought, may, and they are hereby authorised and required, to proceed in hearing and determining the demandant's title and claim, in the same manner as if all the lands, tenements and hereditaments, were situated within the district of the court in which such suit shall be commenced; any law, usage or custom, to the contrary in any wise notwithstanding.

Where they lie in different districts.

8. *Provided always,* That no suit for partition of lands, tenements or hereditaments, shall be commenced in any superior court of this province, unless part of the demandant's claim lie within the district of the court in which the suit is brought.

No suit to lie unless part of the claim is within the district.

9. *And be it further enacted by the authority aforesaid,* That when the high sheriff, by reason of sickness, or any other disability, cannot be present at the execution of any judgment in partition; in such case, the under-sheriff, duly appointed and qualified according to law, in presence of two justices of the peace of the county where the lands, tenements and hereditaments to be divided lie, shall and may proceed to execution of any writ of partition, by inquisition in due form of law, as if the high sheriff were then personally present; and the high sheriff thereupon shall, and he is hereby enabled and required to make the same return, as if he were personally present at such execution. And in case such partition

Manner of proceeding where the high-sheriff cannot act.

Conditions of
the landlords &
tenants after
partition.

be made, returned and filed, he or they that were tenant or tenants of any of the said messuages, lands, tenements and hereditaments, or any part or purpart thereof, before they were divided, shall be tenant or tenants for such part, set out severally of the respective landlords or owners thereof, by and under the same conditions, rents, covenants, and reservations, where they are or shall be so divided : And the landlords and owners of the several parts and purparts so divided and allotted as aforesaid, shall warrant and make good unto their respective tenants, the said several parts severally after such partition, as they are or were bound to do by any leases or grants of their respective parts before any partition made : And in case any demandant be tenant in actual possession, to the tenant to the action for his part or proportion, or any part thereof, in the messuages, lands, tenements and hereditaments, to be divided by virtue of a writ of partition as aforesaid, for any term of life, lives, or years, or uncertain interest, the said tenant shall stand and be possessed of the said purparts and proportions, for the like term, and under the same conditions and covenants, as when it is set out severally, in pursuance of this, or any other act, statute or law to that purpose.

Penalty on she-
riff's neglect-
ing to attend
the execution
of partitions, &c.

10. *And be it further enacted by the authority aforesaid,* That the respective sheriffs, their under-sheriffs and deputies ; and in case of sickness, or disability in the high-sheriff, all justices of the peace within their respective counties, shall give due attendance to the executing such writ of partition, unless reasonable cause be shewn to the court upon oath, and there allowed of, or otherwise be liable, every of them to pay unto the demandant or plaintiff, such costs and damages as shall be awarded by the court, not exceeding ten pounds, proclamation money ; for which the demandant may bring his action in any court having cognizance thereof ; wherein no essoin, protection, privilege, or wager of law, shall be allowed : and in case the demandant doth not agree to pay unto the sheriffs or under-sheriffs, justices and jurors, such fees as they shall respectively demand for their attendance in the execution of the same, and returning thereof ; then the court shall award what each person shall receive, having respect to the distance of the place from their respective habitations, the laws of this province, and the time they must necessarily spend about the same, for which they may severally bring their actions as aforesaid.

Provision for
fees to sheriffs,
&c.

11. *And be it further enacted*, That the demandant in any suit for partition of lands, tenements, and hereditaments, shall not recover costs, unless it appears to the court that the tenant or tenants to the action, previous to its commencement, refuse to make partition.

Demandant not to recover costs, unless tenant refuse to make partition.

12. *Provided always*, That this act, nor any thing herein contained, shall extend, or be construed to extend, to alter or abridge the power of the court of chancery in this province, in the partition of any lands, tenements, or hereditaments; any thing herein contained to the contrary thereof, in any wise, notwithstanding.

Court of Chancery's power not abridged.

13. *And be it further enacted by the authority aforesaid*, That this act shall be and continue in force for and during the space of five years, from and after the passing hereof, and to the end of the next session of assembly, and no longer.

Continuance of the act.

CHAP. 97.

An act for ascertaining the boundary line between the county of Rowan, and the counties of Mecklenberg and Tryon; and for appointing commissioners to run the same.

1. *Be it enacted by the governor, council, and assembly, and by the authority of the same*, That Thomas Neil, Thomas Polk, Matthew Locke, Griffith Rutherford, and Peter Johnston, esquires, be appointed commissioners: and they, or a majority of them, are hereby empowered and required, to run the dividing line between the said county of Rowan, and the counties of Mecklenberg and Tryon; beginning at Cold Water, where John Patterson's upper line crosses the creek; thence due west until it intersects the Cherokee Indian line; which said line, when run by the commissioners aforesaid, or a majority of them, shall by them be entered on record in the court of each of the said counties, and shall hereafter be deemed and taken to be the dividing lines between the said counties.

Commissioners appointed to run the dividing line.

CHAP. 98.

An act for securing and preserving the titles of the freeholders in this province.

1. WHEREAS through the neglect and mismanagement of persons, who have heretofore been registers in

this province, many of the books wherein the conveyances of lands within several of the counties are registered, are so abused and defaced, as to be almost unintelligible, and in danger of being entirely lost, and are some of them removed to, and dispersed in other counties, whereby the freeholders are in danger of being greatly injured :

Records to be collected & fair copies made.

[Provision made for transcribing and authenticating the register's books when necessary, by 1814, c. 881, s. 1.]

Persons to be appointed to correct the copies.

2. *Be it therefore enacted by the governor, council, and assembly, and by the authority of the same,* That the justices of the inferior court of any county, or any seven of them, at any court held between the passing of this act and the first day of May, one thousand seven hundred and seventy-two, may, and are hereby empowered, to appoint some person or persons to collect together all the books or papers, wherein are registered the conveyances of lands in their respective counties, and to make a fair copy of the same into a book or books, well bound in calf or vellum ; and the same being fairly copied into the said book or books, to present to the court for their approbation.

3. And the said book or books being approved of by the court, in order to prevent frauds, and correct errors ; *Be it further enacted by the authority aforesaid,* That six persons be appointed to examine and correct the same, in manner following, *to wit,* two of them by the court, two of them by the vestry, and the other two of them by the freeholders of the said county, or a majority of them : and in order that the freeholders be properly convened for that purpose, the justices of the inferior court are hereby empowered, to direct the sheriff of the said county to set up advertisements, appointing a day for the said freeholders to meet at the court-house of the said county, to elect and choose the said two persons for the purpose aforesaid ; and the sheriff is hereby directed to attend at the court-house on such day as shall be so appointed for the election aforesaid, and shall take a list of the names of the voters, and the votes given in by each freeholder in his proper person, and the poll kept open until sunset ; and the sheriff shall declare the persons who have the greatest number of votes duly elected, and shall sign the poll, and return the same to the next inferior court to be filed by the clerk among the records of the said county, the clerk having first made an entry of the names of such persons so elected on the minutes of the said court ; and the person so appointed and elected as aforesaid, having examined the said book or books, and compared them with the originals, and corrected any errors that they

may find in the same, shall certify the same, on oath, in open court; which certificate shall be entered on the minutes of the said court, and also in the said book or books; which certificate so entered in the said book or books, shall be signed by such persons so appointed as aforesaid to examine the same, and be attested by the clerk in open court: and all deeds and conveyances of lands, inserted in the said book or books as aforesaid, from the old registers, books, and papers, shall be deemed and taken to be duly registered and certified copies from the said book or books, and shall be of equal validity with copies of deeds from any other register's office within this province, any law, usage, or custom, to the contrary, notwithstanding.

Copies taken as this act directs to be equally valid with copies from any other register's office.

4. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for any person or persons, so appointed and elected as aforesaid, to collect the books and papers wherein any conveyance of land within the said counties are registered, to demand and receive the said books and papers from every person or persons who may have the same or any of them, in his or their possession: and in case of the refusal of any such person or persons, so possessed as aforesaid, it shall and may be lawful for the superior court of the district, on motion, after ten days previous notice given to such person or persons so refusing, and on the said facts appearing sufficiently to the court, to order and adjudge he or they be committed to close gaol, without bail or mainprize, until he or they shall cause the said books and papers by him possessed, to be delivered to the person or persons to receive the same, and shall also pay and satisfy all such costs as may accrue by reason of such motion.

Power of the persons appointed, to demand books and papers.

Persons refusing to deliver them, to be committed, &c.

5. *And be it further enacted by the authority aforesaid,* That the inferior court of the county where the said records shall be so examined and completed, shall deliver to the register of such county the said books, to be by him kept as usual.

The copies to be delivered to the register.

6. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the justices of the said court, to make such reasonable allowance as may be thought necessary, to such persons as shall be appointed and elected for the purpose aforesaid, to be paid out of the county tax.

Allowance to the persons appointed, for their trouble.

7. And whereas many conveyances for lands in the said counties, certified by the register to have been registered, are not to be found in any of the registers books

All conveyances having certificates of probate, before a

county court, chief justice, or associate justice may be registered before county court, chief justice, or associate justice.

for the respective counties ; *Be it therefore enacted by the authority aforesaid,* That any person producing to the register of the county whereof he is register, any deed of conveyance for lands in the said county, with a certificate thereon endorsed, of the same having been duly proved before the inferior court of the said county, or the chief justice, or one of the associate justices, shall be entitled to have the same registered ; and the register of the said county is hereby required to register the same, if such conveyance be not found in the books, notwithstanding such certificate of registration.

CHAP. 99.

An act for dividing the northern part of Rowan county, and erecting a new county and parish, by the name of Surry county and St. Jude's parish.

Surry county erected.

1. *Be it enacted by the governor, council, and assembly, and by the authority of the same,* That from and after the first day of April next, the said county of Rowan be divided by a line, beginning at a point forty-two miles north of earl Granville's line, on Guilford county line ; thence running north to the Virginia line ; thence westwardly along the mountains to the ridge that divides the waters of Yadkin and the Catawba rivers ; thence along the said ridge to the north-west corner of Rowan county ; then east along Rowan county line to the beginning, be thenceforth erected into a distinct county and parish by the name of Surry county and St. Jude's parish.

SIGNED BY

WILLIAM TRYON, *Esq. Governor.*

JAMES HASELL, *President.*

RICHARD CASWELL, *Speaker.*

Read three times and ratified in open Assembly, }
the 26th day of Jan. A. D. 1771. }

ANNO REGNI GEORGII III.

DECIMO TERTIO.

At an Assembly, begun and held at Newbern, the twenty-fifth day of January, in the thirteenth year of the reign of our sovereign lord George the third, by the grace of God, of Great-Britain, France, and Ireland, king, defender of the faith, &c. and in the year of our Lord one thousand seven hundred and seventy-three : being the first session of this Assembly.

Josiah Martin,
Esq. governor.

CHAP. 100.

An act for the relief of insolvent debtors, with respect to the imprisonment of their persons.

1. *Be it enacted by the Governor, Council and Assembly, and by the authority of the same,* That if any person or persons (*a*) now are, or hereafter shall be taken or charged on mesne process or execution for any debt, and shall have remained in close prison by the space of twenty days, it shall and may be lawful for two justices of the peace, or any two of the judges of the inferior, or any one of the judges of the superior courts of this province, either in or out of court, upon petition or petitions of such prisoner, under his or their hands and seals, whereof notice shall be given to the person or persons, his or their executors, administrators, attornies, or agents, at whose suit such prisoner or prisoners shall be imprisoned, to require the sheriff, gaoler, or keeper of any prison, within their respective jurisdictions, to bring before such justices of the peace, judges of the inferior court of pleas and quarter-sessions, or judge of the superior court, issuing such warrant, either in or out of court, the body of any person being in prison as aforesaid, together with a list of the several writs, mesne processes and executions, with which he, she or they, is or are charged in the several gaols as aforesaid ; which warrant every such sheriff, gaoler, or keeper is hereby commanded to obey : And such prisoner or prisoners coming before the said justices or judges, (the creditor or creditors, if resident in this province, at whose suit he is confined, being first personally summoned, according to the directions of this act) if he, she, or they have no visible estate, real or personal, and

Prisoners for debt proving themselves not worth 40s. to be set at liberty, &c.

a [Extended to free persons of colour, by 1810, c. 802, & to debtors within the rules, upon their going into close prison, 1818, c. 964.]

shall make oath before the said justices of the peace, or judges of the inferior court, or judge of the superior court respectively, issuing such warrant, that he hath not the worth of forty shillings, sterling money, in any worldly substance, either in debts owing to him, or otherwise howsoever, over and besides his wearing apparel, working tools and arms for muster; (a) and that he has not at any time since his imprisonment, or before, directly or indirectly, sold, assigned, or otherwise disposed of, or made over, in trust for himself or otherwise, any part of his real or personal estate, whereby to have or expect any benefit or profit to himself, or to defraud any of his creditors to whom he is indebted; and if there be no person present that can prove the contrary, then such person, by such court or justices, without form of trial, shall be immediately set at liberty, and shall stand forever discharged of all such debts so sued for, and all costs of suit: But in case such person shall afterwards be discovered to have sworn falsely, he shall be indicted for perjury; and if convicted, shall lose both his ears in the pillory, and be liable to satisfy the debt and damages, and be rendered incapable of taking the benefit of this act.

a [One bed and furniture also excepted, by 1808, c. 746, one wheel and cards, and a loom, by 1810, c. 797.]

Justices, &c. to put the proceedings out of court in writing, & make return to court, on penalty of 5*l*.

3 [The justices of any county where a prisoner is confined may perform this duty, 1816, c. 907.]

Cases in which persons in execution may deliver up their effects by petition to court.

c [Within the walls of the prison, 1809, c. 766.]

Manner of proceeding upon it.

2. *And be it further enacted*, That the said justices (b) of the peace, judges of the inferior, and judge of the superior court, respectively, before whom such prisoner or prisoners shall, upon oath, have discharged themselves, when the proceedings are before them out of court, shall put the same in writing, under their hands, and return the same into the court from whence the mesne process or execution issued, there to be kept on record, under the penalty of five pounds, proclamation money, for each judge or justice for such omission and neglect; to be paid to the person injured, by order of the said court.

3. *And be it further enacted*, That if any person or persons now are, or hereafter shall be taken or charged in mesne process or (c) execution for any sum, and shall have remained in prison by the space of 20 days, and shall have any estate, real or personal, and be minded to deliver up his, her or their effects to his or their creditors, it shall be lawful for such prisoner to prefer a petition to the court from whence the process issued, setting forth the cause of imprisonment, and an exact account of his or their estate, and all circumstances relating thereto; which petition, subscribed by him, her or them, and schedule, shall be lodged with the clerk of the said court,

from which such process issued, twenty days at least before the next succeeding court: And upon such petition so filed, the clerk of the said court shall issue, under his hand and seal, a copy of the said schedule, and a notice to the creditor or creditors, at whose suit such prisoner or prisoners are or shall be confined, setting forth the substance of the said petition, and summoning of them to attend the next succeeding court, to shew cause, if any they have, why the prayer of the said petition should not be granted; which notice being duly served upon the person or persons, his, her, or their executors, administrators, attorney, or agent, at whose suit such prisoner or prisoners shall be imprisoned, ten days at least before the sitting of the said court, the court shall order the said prisoner or prisoners to be brought before them; and if the said creditor or creditors, at whose suit he is imprisoned, shall appear, or being duly summoned shall fail to appear, the court shall proceed to examine the nature of the said petition in a summary way, and shall tender to such person an oath, to the effect following:

I, A. B., in the presence of Almighty God, solemnly swear, profess and declare, That the schedule now delivered, and by me subscribed, doth contain, to the best of my knowledge and remembrance, a full, just, true, and perfect account and discovery, of all the estate, goods and effects, unto me any ways belonging, and such debts as are to me owing, or to any person in trust for me; and of all securities and contracts, whereby any money may hereafter become payable, or any benefit or advantage accrue to me or to my use, or to any other person or persons in trust for me; and that I, or any other person or persons in trust for me, have not land, money, or stock, or any other estate, real or personal, in possession, reversion, or remainder, of the value of the debt or debts with which I am charged in execution; and that I have not, directly or indirectly, sold, lessened, or otherwise disposed of, in trust, or concealed, all or any part of my lands, money, goods, stocks, debts, securities, contracts, or estate, whereby to secure the same, to receive or expect any profit or advantage thereof, or to defraud or deceive any creditor or creditors to whom I am indebted, in any wise howsoever. So help me God. Debtor's oath.

4. *Be it further enacted*, That if such prisoner take such oath, and the court be convinced of the truth there- Prisoner to be set at liberty on

his taking the oath, and the court being convinced of the truth of it.

of, the schedule so subscribed being filed with the clerk of the court for the better information of the creditors of such prisoner or prisoners, then, and in that case, it shall and may be lawful for the court before whom such oath was taken, by warrant, to command the sheriff, gaoler, or keeper of any prison, forthwith to set at liberty such prisoner; which warrant shall be a sufficient discharge to such sheriff, gaoler, or keeper, and shall indemnify him or them against any escape or escapes, or action or actions, whatsoever, which shall or may be brought, commenced or prosecuted, against him or them, by reason thereof; and if any such action shall be commenced against any sheriff or other officer, for performing his duty in pursuance of this act, such sheriff or other officer may plead the general issue, and give this act in evidence.

Debtor's lands, &c. to be sold, and money to be paid the clerk of the court.

5. *And be it further enacted by the authority aforesaid,* That all the lands, tenements and hereditaments, which shall be contained in such schedule, for such use, interest, right, or title, as such prisoner or prisoners then shall have in the same which he or she may lawfully depart withal, and also all goods and chattels whatsoever, in such schedule also contained, shall be vested in the sheriff of the county wherein such lands, tenements, hereditaments, goods and chattels, shall lie, or be found; and such sheriff is hereby authorised, empowered, and required, to sell at public vendue, and convey the same to any person or persons whatsoever, for the best price that can be got for the same, and the monies arising by such sale shall be by such sheriff or officer, upon oath, paid into the hands of the clerk of the superior court of the district where such prisoner shall be confined, for the uses and purposes hereafter mentioned; saving to every such prisoner his or her necessary apparel, and utensils of trade.

Commissioners to be appointed to examine claims of creditors, who are to be paid in proportion to their debts.

6. *And be it further enacted by the authority aforesaid,* That the judges of the superior court shall appoint two commissioners, who shall have full power to examine into the claims of all and singular the creditors of the person or persons imprisoned, as well those at whose suit he was committed, as of all others; and the said commissioners shall by advertisement, at the court-house of the district, or in some public newspaper or gazette, make known the time at which they propose to examine such claims (which shall be within sixty days after their being appointed) and upon such creditors, their executors

or administrators, agents or attornies, appearing before them, and satisfying them of the justice of their claims, they shall proceed to make distribution amongst each and every of the creditors so appearing in proportion to their respective demands; and the clerk of the said court is hereby directed to pay such monies so received upon the sale of such insolvent's estate into the hands of the said commissioners, for the purposes aforesaid.

7. *And be it further enacted by the authority aforesaid,* That the person of such debtor so discharged shall never be arrested for the same debt, but the judgment shall be held to be fully satisfied, and no execution (a) whatever shall by virtue thereof issue against any estate which the said insolvent debtor or debtors may afterwards acquire.

8. *And be it further enacted by the authority aforesaid,* That whereas it has sometimes happened that poor insolvent debtors have been a long time confined in gaol, for want of knowing to whom to give notice of their intention to take the benefit of the act for relief of such insolvents, where the party at whose suit such debtor was in execution did not reside in this colony, nor had any known agent or attorney here to whom he could give such notice, which by the laws in force in such cases is required to be given; which long confinements have also happened in cases where debtors have remained in prison twenty days, and the sheriffs or gaolers have not known to whom to give notice thereof, or of whom to demand security for their prison fees after the expiration of the twenty days: for the further relief therefore of such insolvent debtors, *Be it enacted by the authority aforesaid,* That when the party at whose suit or instance any such debtor shall be confined in execution does not reside in this colony, nor hath any known agent or attorney here, it shall and may be lawful and sufficient for such insolvent debtor to give notice of such his intention to take the benefit of the said act for relief of insolvents, to the attorney at law who prosecuted the suit against him; and also where the debtor shall have remained in execution for the space of twenty days, it shall be lawful and sufficient for the sheriff or gaoler, in the like cases, to give notice thereof to the attorney who prosecuted the suit, and to demand security of him for the prison fees that shall arise after the expiration of the twenty days; and if he shall fail or refuse to give such security, then to discharge such debtor out of custody.

Debtors discharged from the same debts forever.

a [Execution may issue against any estate he afterwards acquires, 1793, c. 380.]

Proceedings where creditors reside out of the country.

Debtors' unable
to pay prison
fees to be dis-
charged.

9. *And be it further enacted by the authority aforesaid,* That if at any time hereafter any person being taken or charged on mesne process or execution. shall not be able to satisfy or pay his or her prison fees, shall after the expiration of twenty days be discharged by the creditor, and the sheriff or gaoler may demand or recover of the party or parties at whose suit such insolvent person shall be imprisoned, all such fees as shall become due on account of such imprisonment.

Penalty for per-
jury.

10. *And be it further enacted by the authority aforesaid,* That if any person who shall take such oath, shall, upon indictment of perjury, be convicted thereon, he shall suffer all pains of wilful perjury, and shall be liable to be taken on a new process, and shall never after have the benefit of this act.

Quakers' affir-
mation allowed.

11. *And be it further enacted by the authority aforesaid,* That where by this act an oath is required, the solemn affirmation of a quaker shall be taken in lieu thereof; and every person convicted of wilful and false affirming, shall suffer the like penalties as for wilful and corrupt perjury.

Repealing
clause.

12. *And be it further enacted,* That every law heretofore made, respecting the relief of poor debtors, as to the imprisonment of their persons, be repealed and made void,

CHAP. 101.

An act for annexing the north part of Rowan to the county of Surry, and the further establishing and erecting the parish of Dobbs into a separate and distinct parish.

1. WHEREAS the inhabitants of the north part of Rowan county labour under great inconveniences in attending the courts, and other public meetings, at the court-house of the said county; and as it would be much more convenient for them to attend public business in the county of Surry, are desirous of being annexed thereto; and as by an act, entitled, an act for erecting that part of Rowan county called Wachovia, into a distinct parish, the tract of land formerly in the county of Rowan, called and named Wachovia, belonging to the *unitas fratrum* (or united brethren) according to the known boundaries and limits thereof, was erected into a parish, distinct and separate from the parish of St. Luke, in the said county, and called by the name of the parish of Dobbs, and were intended to hold, use, and exercise the like authorities

and powers, and possess and enjoy the same immunities and other privileges as other parishes in this province: and as by an act for dividing the northern part of Rowan county, and erecting a new county and parish, by the name of Surry county, and St. Jude's parish, the dividing lines between the counties of Rowan and Surry ran through the said parish of Dobbs, by which means part of the said parish was left in each of the said counties, from which great inconveniences arise to the inhabitants of the said parish :

2. *Be it therefore enacted by the governor, council, and assembly, and by the authority of the same,* That from and after the passing of this act, the dividing line between the counties of Rowan and Surry shall begin at a point in the line dividing Rowan and Guilford counties, thirty-six miles north from the south-east corner of Rowan, thence running a due west course to the ridge dividing the waters of the Yadkin and Catawba rivers, which line is to be parallel to earl Granville's south boundary line (excepting where the bounds of the parish of Dobbs interfere, which parish is hereby intended and declared to be included in Surry county) and by the said dividing ridge and the mountains to the Virginia line; and all that part bounded to the northward by the line before described to be marked, shall be, and is hereby annexed to, and made part of Surry county.

Part of Rowan added to Surry county.

3. *And be it further enacted by the authority aforesaid,* That that part of Rowan county, and parish of Dobbs, which by the division of Rowan and Surry counties fell into Rowan county, be added to Surry county as aforesaid; so that all that original tract of land called Wachovia, or Dobb's parish, according to the known bounds and limits thereof, be made part of Surry county, and be and remain one entire parish as before, distinct and separate from the parish of St. Jude, and any other parish whatever, and be entitled to use, hold, and exercise the like authorities and powers, and possess and enjoy the same immunities, and other privileges, as other parishes in this province.

Wachovia added to Surry.

CHAP. 102.

An act for the relief of persons who have, or may suffer, by their deeds and mesne conveyances not being proved and registered, within the time heretofore appointed by law.

[Sec 1770, c. 90, & 1777, c. 110.]

1. WHEREAS many persons, through ignorance of

the law, have neglected to have their deeds and mesne conveyances proved and registered according to the directions of the several acts of Assembly in such case made and provided: For remedy whereof,

Deeds may be registered within two years.

2. *Be it enacted by the Governor, Council and Assembly, and by the authority of the same,* That all deeds and mesne conveyances of lands, tenements and hereditaments, not already registered, acknowledged, or proved, shall and may, within two years after the passing of this act, be acknowledged by the grantor or grantors, his or their agents or attornies, or proved by one or more of the subscribing witnesses to the same, and tendered or delivered to the registers of the counties where such lands, tenements or hereditaments, are respectively situated: And all deeds and mesne conveyances whatsoever, which shall be acknowledged or proved according to the directions of this act, though not within two years after the date of the respective conveyances, shall be good and valid in law, and shall enure and take effect as fully and effectually, to the use and behoof of the grantees, their heirs and assigns, and those claiming under them, as if such deeds and conveyances were acknowledged or proved and registered, agreeable to the directions of any act of Assembly heretofore made.

Deeds registered, though not within 2 years, declared good.

Read three times and ratified in open Assembly, }
the 6th day of March, 1773. }

SIGNED BY

JOSIAH MARTIN, *Esq. Governor.*

JAMES HASELL, *President.*

JOHN HARVEY, *Speaker.*

ANNO REGNI GEORGI II.

DECIMO QUARTO.

At an Assembly begun and held at Newbern, the second day of March, in the fourteenth year of the reign of our Sovereign Lord George the Third, by the grace of God, of Great-Britain, France and Ireland, king, defender of the faith, &c. and in the year of our Lord one thousand seven hundred and seventy-four: Being the second session of this Assembly.

CHAP. 103.

An act to prevent the pernicious practice of hunting with a gun in the night by fire-light.

[*Provided for by subsequent acts, all but the following section :*]

AND whereas from the circumstances of secrecy which attend the perpetration of such offences, it is in most instances impracticable to convict offenders by indifferent testimony; *Be it therefore enacted by the authority aforesaid*, That when more persons than one are engaged in the commission of such offence, it shall and may be lawful for one of them to give evidence (a) against any one or all others concerned; and his testimony shall be held and deemed to be as effectual, and shall have equal weight, as if given by any person perfectly disinterested and innocent of the offence giving like information of the same facts, subject in other respects to the general rules of law respecting witnesses: And such witness, upon giving such information, and after due conviction of one or more such offenders, shall be acquitted, and held discharged from all penalties and pains to be inflicted by this act; and shall have equal right to the moiety of the fine heretofore mentioned as other informers have.

What testimony sufficient to convict fire hunters.

a [A witness summoned against a fire hunter and refusing or neglecting to give evidence, is to be committed to gaol, 1779, c. 154.]

[The offence of fire hunting provided for by 1784, c. 212, & 1801, c. 595.]

CHAP. 104.

An act for appointing commissioners for building a court-house, prison and stocks for the county of Tryon, and for establishing a boundary line between the counties of Tryon and Mecklenburg.

AND whereas sundry disputes have arisen, relative to the boundary line between the said county of Tryon and the county of Mecklenburgh, to prevent which for the future, *Be it enacted by the authority aforesaid*, That the river Catawba be, and is hereby declared the boundary line between the said counties.

Boundary between the counties.

CHAP. 105.

An act directing the duty of sheriffs with respect to insolvent taxables.

1. WHEREAS it is customary for the inferior courts of this province to allow the sheriffs in the settlement of their accounts a large number of insolvent taxables, annually, which they are not by any law prevented from afterwards collecting to their own use, to the great injury of the public, and distress of many poor families, who, for want of proper information, are not benefited or relieved by the indulgence of the courts to the sheriffs on their accounts: For remedy whereof,

Sheriffs allowed no more insolvents than sworn to.

§ [A collector returning his list of insolvents must swear that he has been at the residence of the parties, and could find no property, 1786, c. 255, s. 2.]
[The sheriff must also swear that the insolvents were so when he ought to have accounted, 1793, c. 385.]

Penalty for collecting insolvent taxes.

2. *Be it enacted by the Governor, Council and Assembly, and by the authority of the same,* That from and after the passing of this act, it shall not be lawful for any inferior court in this province to allow any sheriff in the settlement of his accounts for more insolvent taxables than he shall have expressly named and sworn to, (a) in a list by him then delivered to the court, to be deposited with the clerk of the said court, and kept in his office for public inspection; which clerk shall within ten days from such settlement, cause a copy of the said list to be put up at the court-house in his county annually, under the penalty of ten pounds, proclamation money, for each and every neglect; to be recovered with costs, by action of debt or information, in any inferior court of this province, and applied, one-half to the use of the parish where the offence may be committed, and the other half to the person who shall sue for the same; which clerk shall be entitled to the sum of twenty shillings for the above service, to be paid annually, out of the county tax.

3. *And be it further enacted by the authority aforesaid,* That if after the passing this act, any sheriff shall return to court as insolvent, the name of any person who is not enlisted, or has actually paid his tax for that year, or shall presume to collect or receive, by himself or deputy, from any person, his tax for the year for which he has been returned an insolvent, such sheriff shall forfeit and pay for every offence the sum of twenty pounds; to be recovered as is before directed, and applied one half to the use of the parish where the offence shall be committed, the other half to the party injured, who may sue for the same.

[The sheriff is not to be allowed for insolvents, or commissions, if he fail to settle by the time prescribed by law, or to take the oath prescribed, 1795, c. 430, s. 1.]

CHAP. 106.

An act for erecting part of the counties of Halifax and Tyrrell into one distinct county and parish.

1. WHEREAS the great extent of the counties of Halifax and Tyrrell, renders it exceedingly troublesome and expensive to many of the inhabitants thereof to attend the courts of justice, elections and general musters, and for the sheriffs to make public collections: For remedy whereof,

2. *Be it enacted by the governor, council, and assembly, and by the authority of the same,* That from and after the passing of this act, the said counties be divided as follows, *to wit*, beginning at the mouth of Kahukee creek, on Roanoke river, and running a direct line to Edgcomb county line, where it crosses the Tar river road that leads by Nicholas Loyd's; thence down Edgcomb line, to Pitt county line; thence along Pitt line, to Beaufort county line; thence along Beaufort line, to the head of Welch's creek, near Stewart Hamilton's plantation; thence down Welch's creek, to Roanoke river; thence up the river to the beginning; and all that part of the said counties, included within the said bounds, be thenceforth erected into a distinct county and parish, and called and known by the name of Martin county, and parish of St. Martin. Martin county erected.

SIGNED BY

JOSIAH MARTIN, *Esq. Governor.*

JAMES HASELL, *President.*

JOHN HARVEY, *Speaker.*

Read three times and ratified in open Assembly, }
the 19th day of March, A. D. 1774. }

At a Congress of the Representatives of the Freemen of the State of North Carolina, assembled at Halifax, the seventeenth day of December, in the year of our lord one thousand seven hundred and seventy-six, for the purpose of establishing a CONSTITUTION or FORM OF GOVERNMENT for the said State.

CHAP. 107.

An Ordinance of the State of North-Carolina to secure the titles of church lands and houses of public worship, to the proprietors thereof, and quiet them in the peaceable possession of the same.

1. WHEREAS controversies may arise concerning the titles, property and occupancy of glebes, church lands, and the several churches, chapels and other houses built for the purpose of public worship in this state, and such controversies might prove injurious to the peace and tranquility thereof: For prevention whereof,

2. *Be it ordained and declared by the representatives of the freemen of the State of North-Carolina, in Congress assembled, and by the authority of the same, That all glebes, lands and tenements, heretofore purchased, given or devised for the support of any particular ministry or mode of worship; and all churches, chapels and other houses (a) built for the purpose of public worship, shall be and remain forever to the use and occupancy of that religious society, church, sect, denomination, to or for which the said glebes, lands and tenements were so purchased, given or devised, or the said churches, chapels or other houses of public worship were built.*

a [Houses of worship erected on vacant land, & two acres adjoining, shall be vested in the sect or society who built it, 1778, c. 132, s. 6.]

CORNELIUS HARNETT, *Vice-President.*

Copy Test,

J. GLASGOW, *Secretary.*

Read the third time; and ratified in open }
Congress, the 23d of December, 1776. }



At a General Assembly, begun and held at Newbern, on the eighth day of April, in the year of our lord one thousand seven hundred and seventy-seven, and in the first year of the independence of the said state: being the first session of this assembly.

Richard Cas-
well, Esq. go-
vernor.

CHAP. 108.

An act concerning oaths.

1. WHEREAS lawful oaths, for the discovery of truth, and establishing right, are necessary, and highly conducive to the important ends of good government; and being most solemn appeals to Almighty God, as the omniscient witness of the truth, just and omnipotent avenger of falsehood, such oaths ought therefore to be taken and administered with the utmost solemnity :

[See 1777, c.
115, s. 41, 42.]

2. *Be it therefore enacted by the General Assembly of the state of North-Carolina, and by the authority of the same,* That judges, justices of the peace, and other persons, who are or shall be empowered to administer oaths, shall (except in the cases in this act excepted) require the party to be sworn to lay his hand upon the holy evangelists of Almighty God, in token of his engagement to speak the truth, as he hopes to be saved in the way and method of salvation pointed out in that blessed volume, and in further token, that if he should swerve from the truth, he may justly be deprived of all the blessings of the gospel, and made liable to that vengeance which he has imprecated on his own head; and after repeating the words *so help me God*, shall kiss the holy gospels, as a seal of confirmation to the said engagements.

Manner of tak-
ing oaths.

3. *And be it enacted by the authority aforesaid,* That in all cases when any judges, justices of the peace, or other persons, are or shall be empowered to administer any manner of oath in this state, and the person to be sworn shall be conscientiously scrupulous of taking a book oath in manner aforesaid, and pray the benefit of this act, it shall and may be lawful for all such judges, justices, and other persons, and they, and each of them, are hereby required to excuse such person from laying hands upon or touching the holy gospels; and the said judges, justices, and others, are hereby directed in such case to adminis-

Method where
persons are con-
scientiously
scrupulous.

ter the oath required, in the following manner, *to wit*, the party so conscientiously scrupulous, and praying the benefit of this act, shall stand with his right hand lifted up towards heaven, in token of his solemn appeal to the supreme God, whose dwelling is in the highest heavens, and also in token, that if he should swerve from the truth, he would draw down the vengeance of heaven upon his head, and shall introduce the intended oath with these words, *viz.* I, A. B. do appeal to God, as a witness of the truth and avenger of falsehood, as I shall answer the same at the great day of judgment, when the secrets of all hearts shall be known, that, &c. as the words of the oath may be. *And it is hereby declared*, That an oath thus administered and taken, with the right hand lifted up, is and shall be a lawful oath in this state; and such oath shall be admitted and used in all courts in this state where the same shall be requested as aforesaid, and shall be equally good and valid in law, to all intents and purposes, as if the same oath had been taken by the party, having laid his hand upon, and kissed the holy gospels.

In what cases affirmation of Quakers, &c. to be admitted.

[Acts 1777, c. 115, s. 42, & 1819, c. 1019, extend the privilege to criminal cases.]

4. *And be it enacted by the authority aforesaid*, That the solemn affirmation of quakers, moravians, and menonists, made in the manner heretofore used and accustomed, shall be admitted as evidence in civil controversies in this state; and where other persons are required to take an oath or oaths to the state, the said quakers, moravians and menonists, shall make their solemn affirmations in the words of the said oath or oaths, beginning after the word swear, or shall make such affirmations as shall be hereafter provided for them by law.

CHAP. 109.

An act to prevent domestic insurrections, and for other purposes.

[See 1779, c. 143, & 1796, c. 453.]

1. **WHEREAS** the evil and pernicious practice of freeing slaves in this state, ought at this alarming and critical time to be guarded against by every friend and wellwisher to his country :

Slaves not to be set free, but for meritorious services, &c.

a [Confined to the superior court, 1818, c. 971.]

2. *Be it therefore enacted by the General Assembly of the State of North Carolina, and by the authority of the same*, That no negro or mulatto slave shall hereafter be set free, except for meritorious services, to be adjudged of and allowed by the county court, (a) and license first had and obtained thereupon. (b) And when any slave is or shall be

b [The emancipated slave is to give bond, 1795, c. 444, s. 3. The owner is also to enter into bond, 1801, c. 584, s. 1.]

est free by his or her master or owner otherwise than is herein before directed, it shall and may be lawful for any freeholder (c) in this state, to apprehend and take up such slave, and deliver him or her to the sheriff of the county, who, on receiving such slave, shall give such freeholder a receipt for the same; and the sheriff shall commit all such slaves to the gaol of the county, there to remain until the next court to be held for such county; and the court of the county shall order all such confined slaves to be sold during the term to the highest bidder.

Proceedings where slaves are otherwise set free.

3. *Provided always*, That the sheriff, upon committing any such slave or slaves, shall at least five days before such sale, give notice in writing to the last owner or owners, or the reputed owner or owners of such slave or slaves, of the time and place of sale, and of the name and names of such slaves, to the end that such owner or owners may, if he or they think proper, make his or their claim to the same; but if such owner or owners shall neglect or refuse to appear on the day of sale (due proof of the service of such notice being made to the satisfaction of the court) such owner or owners, so neglecting or refusing, shall be forever barred from making any claim to such slaves.

Notice to be given to the owners, who are to be barred if they do not claim.

4. *And be it further enacted by the authority aforesaid*, That the neat proceeds of the money arising by such sale shall be disposed of in the following manner, *that is to say*, That one-fifth part thereof shall be paid to the takers up of such negroes or mulattoes, and that the remaining part of such money be paid into the hands of the public treasurers, to defray the contingent charges of government, and to no other intent, use, or purpose, whatsoever.

Money arising by the sale of the slaves appropriated.

c [A justice upon the information of any freeman is to issue a warrant to the sheriff, 1788, c. 289.]

CHAP. 110.

An act for the relief of such persons who have or may suffer, by their deeds and mesne conveyances not being proved and registered within the time heretofore appointed by law.

1. WHEREAS many persons, through ignorance of the law, have neglected to have their deeds and mesne conveyances proved and registered according to the directions of the several acts of assembly in such case made and provided: For remedy whereof, [See 1773, c. 102, & 1780, c. 165.]

Further time allowed for proving deeds.

2. *Be it enacted by the general assembly of the state of North-Carolina, and by the authority of the same, That all deeds and mesne conveyances of lands, tenements, and hereditaments, not already registered, acknowledged or proved, shall and may, within two years after the passing of this act, be acknowledged by the grantor or grantors, his or their agents or attorney, or proved by one or more of the subscribing witnesses of the same, and tendered or delivered to the registers of the counties where such lands, tenements, or hereditaments, are respectively situated; and all deeds and mesne conveyances whatsoever, which shall be acknowledged or proved according to the directions of this act, though not within two years after the date of the respective conveyances, shall be good and valid in law, and shall enure and take effect as fully and effectually to the use and behoof of the grantees, their heirs and assigns, and those claiming under them, as if such deeds and conveyances were acknowledged, or proved, and registered, agreeable to the directions of any act of assembly heretofore made.*

CHAP. 111.

An act for establishing a new county between Hillsborough and the Virginia line, by erecting the northern part of Orange county into a distinct county, by the name of Caswell.

1. WHEREAS the large extent of the county of Orange renders the attendance of the inhabitants of the northern part to do public duties extremely difficult and expensive: For remedy whereof,

Orange county divided.

2. *Be it enacted by the general assembly of the state of North-Carolina, and by the authority of the same, That from and after the first day of June next, the inhabitants of the county of Orange lying to the north of a point twelve miles due north of Hillsborough, and bounded as follows, to wit, Beginning at the aforesaid point, running thence due east to Granville county line, thence north along Granville county line to the Virginia line, thence west along the Virginia line to Guilford county line, thence south along Guilford county line to a point due west of the beginning, thence due east to the beginning, be erected into a distinct county by the name of Caswell county.*

Caswell erected.

CHAP. 112.

An act for dividing the county of Pasquotank, and establishing that part thereof on the north-east side of Pasquotank river, a county, by the name of Camden.

1. WHEREAS by reason of the width of Pasquotank river, and the difficulty of passing the same, especially in boisterous weather, it is extremely inconvenient for the inhabitants who live on the north-east side of said river to attend courts and other public business in the county of Pasquotank: For remedy whereof,

2. *Be it therefore enacted by the general assembly of the state of North-Carolina, and it is hereby enacted by the authority of the same,* That all that part of Pasquotank county, lying on the north east side of the said river, and of a line to be run from the head of the said river, a north-west course to the Virginia line, shall be, and is hereby established a county, by the name of Camden. Pasquotank
county divided.

CHAP. 113.

An act for dividing Rowan county, and other purposes therein mentioned.

1. WHEREAS the large extent of the county of Rowan, renders it grievous and troublesome to many of the inhabitants thereof, to attend the courts and general elections, and other public meetings appointed therein;

2. *Be it therefore enacted by the general assembly of the state of North-Carolina, and by the authority of the same,* That from and after the first day of June next, the said county of Rowan be divided by a line beginning at the Catawba river, on the line between Rowan and Tryon counties; thence running up the meanders of said river to the north end of an island, known by the name of the Three Cornered Island; thence north to the ridge that divides the Yadkin and Catawba waters, then westerly along the ridge to the mountain which divides the eastern and western waters, commonly known by the name of the Blue Mountain. And that all that part of the late county of Rowan, which lies to the east of the said dividing line, shall continue and remain a distinct county, by the name of Rowan; and all that other part of the said county of Rowan which lies west and south of the said Rowan county
divided.

dividing line, shall thenceforth be erected into a new and distinct county, by the name of Burke.

Read three times and ratified in General Assembly, }
the 9th day of May, 1777. }

SIGNED BY

SAMUEL ASHE, S. S.

ABNER NASH, S. C.

Richard Cas-
well, Esq. go-
vernor.

At a General Assembly, begun and held at Newbern, on the fifteenth day of November, in the year of our Lord one thousand seven hundred and seventy-seven, and in the second year of the independence of the said state : being the second session of this Assembly.

CHAP. 114.

[See 1778, c.
132—1779, c.
140—1779, c.
155—1780, c.
165—1780, c.
169—June,
1781, c. 172,
1784, c. 200
& 202.]

An act for establishing offices for receiving entries of claims for lands in the several counties within this state, for ascertaining the method of obtaining titles to the same, and for other purposes therein mentioned.

1. WHEREAS it is expedient that the lands within this state should be parcelled out to industrious people, for the settlement thereof, and increasing the strength and number of the people of the country, by affording an easy and comfortable subsistence for families :

Entry takers &
surveyors to be
elected.

2. *Be it therefore enacted by the General Assembly of the state of N. Carolina, and it is hereby enacted by the authority of the same,* That the justices of the peace in every county within this state, on the second day of the next court which shall be held after the end of this present session of Assembly, and afterwards at the next court which shall be held after each respective vacancy, shall elect one good and sufficient person to receive entries of claims for lands within such county respectively, and also one person properly qualified to be surveyor (a) of lands within the same ; at which election, whosoever shall appear to have the majority of the votes of the justices then present, shall be deemed duly elected, and no other ; and every person so duly elected for either of the offices aforesaid, shall hold the said offices respectively during good behaviour.

a [Surveyor
may appoint a
deputy, 1779, c.
140, s. 5.]

Entries how to
be made.

3. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for any person who is or shall hereafter become a citizen of this state, according to the constitution thereof, and who shall perform the several requisitions by this act required, to enter with the

entry-taker of any county within this state, a claim for any lands lying in such county, which have not been granted by the crown of Great-Britain, or the lords proprietors of Carolina, or any of them, in fee, before the fourth day of July, in the year one thousand seven hundred and seventy-six, or which have accrued or shall accrue to this state, by treaty or conquest, (a) every such citizen, performing every thing by this act required to be previously done. *Provided*, That when any person shall have, *bona fide*, purchased lands, and has failed to register the deeds for the same within the times required by law, nothing herein contained shall bar him from availing himself of the further times given for registering such deeds by any subsequent law. *Provided*, That no person shall be entitled to claim any greater quantity of land than six hundred and forty acres, where the survey shall be bounded in any part by vacant lands, or more than one thousand acres, between the lines of lands already surveyed and laid out for any other person.

Proviso for registering deeds.

Quantity of acres to be granted to one person.

4. *And be it also enacted by the authority aforesaid*, That every person except a guardian who shall claim for an orphan child, and except persons absent in the service of this state, or the United States, before he shall enter a claim for any of the lands aforesaid, shall take and subscribe the oath (b) or affirmation of allegiance and abjuration, prescribed by the law of this state, which oath the entry officer is hereby empowered and required to administer; and every person claiming, shall also, before he shall be entitled to enter a claim for any of said lands, pay into the hands of the entry taker, at the rate of two pounds ten shillings (c) for every hundred acres, together with the fees (d) which shall be by this act made lawful. *Provided*, That where any person shall claim a greater quantity of lands aforesaid than six hundred and forty acres for himself, and one hundred acres for his wife and each of his children, including all that such persons may have claimed in one or more tracts or surveys under this act, within twelve months from the end of this present session of assembly, shall pay for every hundred acres

Persons to take the oaths, and pay the purchase money before they enter lands.
[Obsolete.]

b [The oath now in force is prescribed by 1791, c. 342, s. 1.]

Purchase money where more land is claimed than allowed to one person.

c [50s. either in cash or certificates, 1794, c. 416, 10 cents per acre, 1818, c. 970.]

a [Lands subject to the confiscation law cannot be entered, 1779, c. 139, s. 12, & c. 153, s. 12—1782, c. 175, s. 3, nor those reserved to the Cherokee Indians, 1783, c. 185, s. 6, nor those within the Indian boundaries, 1778, c. 132, s. 4, nor the land lying west of a line run by Meigs and Freeman in this state, 1809, c. 774, s. 1.]

e [The entry taker is to receive only his own fees—the entry money is to be paid to the treasurer, 1794, c. 417—1795, c. 445—1796, c. 455—1797, c. 483—1798, c. 493—1799, c. 525.]

exceeding the quantity aforesaid, five pounds, and so in proportion.

Manner of entering & surveying lands.

5. *And be it also enacted by the authority aforesaid, That the claimant of any land shall produce to the entry taker a writing, setting forth the name of the county wherein the land shall be situated, the nearest water courses and remarkable places, and such water courses, lakes, or ponds, as may be therein, the natural boundaries and lines of any other person or persons, if any, which divide it from other lands; and every such writing shall be endorsed by the entry taker, with the name of the claimant, and the number of acres claimed, and a copy thereof shall be entered in a book, well bound and ruled, with a large margin, and into spaces of equal distances, every space to contain only one entry, and every entry shall be made in the order of time in which it shall be received, and numbered in the margin; and if no person shall appear within three months after to make claim for the same lands, the entry taker shall deliver to the party a copy of the entry, with its proper number, and an order to the county surveyor to survey the same; which order shall be written or printed, on at least half a sheet of paper: But if any person shall appear within the time aforesaid, and set up a claim to any lands which shall be entered, the entry taker shall note the same in the margin of the book of entries, opposite to the claim in dispute, and shall transmit a copy of the whole to the county court, to be proceeded on as by this act is directed, and in the mean time shall forbear to issue any order to the surveyor relative thereto.*

Manner of trying disputed claims to entries of lands.

6. And whereas many of the good people of this state, during the discontinuance of land offices therein, have settled and improved lands, with intention to become lawful proprietors thereof, and by reason there was no method for ascertaining the bounds of their respective claims, it may happen that disputes may arise respecting bounds and priority of occupancy, and it is expedient that all such disputes be terminated with as little delay and expense as possible, consistent with justice and the constitution of this state: (a) *Be it therefore enacted by the authority aforesaid, That when the entry taker shall certify to the county court a disputed claim, in manner as by this act directed, the said court shall order the sheriff to summon a jury of good and lawful men, unconnected by affinity or consanguinity with the contending parties, who shall be above all exceptions, and having given the par-*

a [The governor may suspend the execution of a grant, 1783, c. 185, s. 20—1801, c. 569, s. 7.]

ties ten days previous notice, shall go with the said jury on the premises, and the jury being sworn to do equal right between the parties, to cause the witnesses on both sides to be examined, and the allegations of the parties to be made before such jury, and to receive the verdict of the said jury, and return the same, together with the panel, to the next county court; and at the said court, if it shall appear that the jury have found generally for any of the parties, then the court shall order an authentic copy of the verdict to be delivered to the party for whom the same shall be found, who upon entering the same with the entry taker, and performing the requisites by this act required, shall obtain a certificate and order of survey, in like manner as if he had made entry of a claim for the same premises; and the officer shall refund to the other party all the money which he has received from him, except the fees to himself for the services actually performed; and in all cases where the jury shall find a special verdict, the county court shall decide thereon according to the right of the case, and shall order such determination to be delivered to the party, who may thereupon proceed as in case of a general verdict. *Provided*, That where it shall be made appear to the county court that the jury were partial, or not all good and lawful men as required by the constitution, or have been influenced by any unfair practices of the party for whom they shall find, the said court shall order a new trial, (a) and the proceeding shall be as before directed.

Proviso for a new trial.

a [See 1779, c. 155, 1807, c. 720.]

7. And in order to prevent disputes and delays to persons in obtaining titles to the lands before mentioned, *Be it further enacted by the authority aforesaid*, That where a claim shall be made to any lands for which a prior claim has been duly entered before such subsequent claim shall be received, the party making the same shall enter into bond with the entry taker, with sufficient security, payable to the adverse party, in the sum of fifty (b) pounds, that he will prosecute the said claim with effect; and if he shall fail therein, he shall pay all costs and damages which shall accrue, which costs shall not exceed the fees in cases of juries of view in causes respecting the title or bounds of lands, and the clerks and attornies fees as by law established in other causes, but may be diminished by the courts respectively, as they shall judge right.

Persons making subsequent claims, to give bond to prosecute them.

b (207. by the scale.)

8. *Provided*, That nothing in this act contained shall extend to affect the right, title or interest, which any citi-

Proviso, not to bar the claim of

persons having prior titles.

a [Seven years peaceable possession will bar the claimant under an entry or survey, 1779, c. 140, s. 2.]

Right not obtained as by this act directed, void.

Surveyors how to survey, bound, and describe lands.

b [See 1779, c. 140, & 1784, c. 202.]

c [Must run dividing lines according to the directions he may receive, 1778, c. 132, s. 5.]

d [Where this cannot be done on account of the lines of older surveys, it may be run like other lands, 1779, c. 155, s. 6.]

Proviso to enter islands.

zen may have in lands heretofore obtained by patent from the crown of Great-Britain, or any person claiming by, from, or under the same, or to bar any right of action, entry or possession, to such lands appertaining; but all such rights, titles, interests, rights of action, entry and possession, (*a*) shall be and remain as if this act had never been made.

9. *And be it also enacted by the authority aforesaid,* That every right, title, claim, interest, or property, by any person or persons set up or pretended to any of the before mentioned lands which shall not be obtained in manner by this act directed, or by purchase or inheritance from some person or persons becoming proprietors by virtue thereof, or which shall be obtained in fraud, elusion or evasion of the provisions and restrictions thereof, shall be deemed and are hereby declared utterly void.

10. *And be it further enacted by the authority aforesaid,* That every county surveyor, upon receiving the copy of the entry and order of survey for any claim of lands, shall as soon as may be lay off and survey the same, agreeable to this act, and make thereof two fair plats, the scale whereof shall be mentioned on such plats; and shall set down in words the beginning, angles, distances, marks, and water-courses, and other remarkable places, crossed or touched by or near to the lines of such lands, and also the quantity of acres; (*b*) and shall transmit the plats to the secretary's office, together with the warrant or order of survey, one of which, with the warrant, shall be filed by the secretary, and the other annexed to the grant. And no surveys shall be made without chain-carriers, who shall actually measure the land surveyed, and shall be paid by the party for whom the survey shall be made; and such chain-carriers shall be sworn to measure justly and truly, and to deliver a true account thereof to the surveyor; which oath every surveyor is hereby empowered and required to administer: and every survey shall be bounded by natural boundaries, or right lines, running east, west, north and south, (*c*) and shall be an exact square, or oblong, the length not exceeding double the breadth, unless where such lines interfere with lands already granted or surveyed, or unless where the survey shall be made on any navigable water; in which last case the water shall form one side of the survey, and the breadth on such water shall not be more than one fourth part of the distance back from the water. (*d*) *Provided nevertheless,* That nothing herein contained shall

be construed to extend to prevent any person from entering a claim for any island or islands in navigable waters, the quantity of which shall not exceed what is allowed by this act to be contained in one entry.

11. *And be it enacted by the authority aforesaid,* That the secretary shall make out grants for all surveys returned to his office, which grants shall be authenticated by the governor, and countersigned by the secretary, and recorded in his office, ready to be delivered to the parties to whom the same shall be made, on the first day of April and October, in every year; and every person obtaining a grant for lands, shall within twelve months (a) after such grant shall be perfected as aforesaid, cause the same to be registered in the register's office of the county where the lands shall lie, otherwise such grant shall be void.

Grants to be made by the secretary, and registered within twelve months.

a (See the acts referred to from 1741, c. 34—1715. c. 7.)

12. *And be it further enacted by the authority aforesaid,* That the several entry takers, (b) surveyors, (c) registers, and the secretary, shall be entitled to have and receive the fees hereafter particularly specified, and no more, *that is to say,* To the entry taker, for all services, sixteen shillings. To the surveyor, for making the survey, and all other services for every three hundred acres or under, thirty shillings; and for every one hundred acres more, three shillings. To the secretary, for making out the grants, and recording the same, five shillings. To the governor's secretary, for the great seal, three shillings.

Entry taker's, surveyor's, register's and secretary's fees.

b [4s. for all services.]

c [For every 300 acres on water, 16s. for every 100 acres more 4s. 1783, c. 185, s. 15, surveyors entitled to 20s. per day, for running disputed lands, 1786, c. 252, s. 1.]

13. *And be it further enacted by the authority aforesaid,* That every entry taker and surveyor, before entering upon the execution of his office, shall take and subscribe in open court the oath prescribed for the qualification of officers, and also an oath that he will well and impartially discharge the several duties of his respective office; and shall enter into bond, (d) with sufficient security, to be approved by the county court, in the sum of two thousand pounds, to the governor for the time being, and his successors, for the faithful discharge of his respective duty; which bond, upon a breach of the condition thereof, shall be assigned by the governor to the party or parties injured, who shall and may maintain an action or actions thereon in his or their own name or names, and shall not become void upon the first recovery, or if judgment be for the defendant, but may be put in suit from time to time, until the whole penalty shall be recovered; and every entry taker shall also give bond, in the sum of

Entry takers to take the oaths, and give bond.

d [Entry takers must give bond in 2 00l. and renew every two years, 1793, c. 394—surveyors to renew their bonds every 3 years, 1793, c. 384, s. 4.]

eight thousand pounds, payable to the governor for the time being, and his successors, well and truly to pay to the public treasury all such monies as he is or shall be required by law to pay in virtue of his office.

Penalty on entry taker refusing his duty, or taking unlawful fees.

14. *And be it also enacted by the authority aforesaid,* That every entry taker and surveyor who shall neglect or refuse to perform the several duties by this act required, or shall knowingly suffer the provisions and restrictions thereof to be eluded or evaded, or shall ask, demand or receive, directly or indirectly, any greater fees than are by this act made lawful, shall forfeit the sum of five hundred pounds, to be recovered by action of debt, bill or plaint; and moreover shall forfeit all right to office, and shall be forever disabled from holding the same, or any other office within this state: *Provided,* That no person shall take up any lands under this act in Washington county, in any greater quantity than six hundred and forty acres for himself, and one hundred acres for his wife, and one hundred acres for each of his children, until the legislature shall make further provision relative thereto.

What lands may be entered in Washington county.

Persons who have preference to lands in virtue of old entries or occupancy.

15. *And provided also, and be it further enacted by the authority aforesaid,* That every person or persons, and his or their heirs or assigns, who, in the office of the late earl Granville, or in the late public land office, have heretofore made any entry or entries, or who since the death of the said earl Granville, hath possessed and actually improved (a) any vacant or unappropriated lands for which no just claim by entry in any office shall have been made, shall be entitled, in preference to all others, to enter and obtain a grant or grants for the same, so that such entry or entries be made on or before the first day of January, one thousand seven hundred and seventy-nine, and so that no such grant shall contain more than six hundred and forty acres, subject nevertheless to the payment of five pounds for every hundred acres, and so in proportion, which any person shall claim over and above the quantity which by the provisions of this act each person is allowed to claim for the price of fifty shillings for every hundred acres, and so in proportion: any thing herein before contained to the contrary notwithstanding.

a (Build a house or clear, inclose and cultivate, 1779, c. 140, s. 3.)

Not to extend to lapsed time.

16. *Provided, nevertheless,* That this act shall not extend to confirm any entry made or grant obtained in the late public land office, for lands in the late lord Granville's district, or to any entry which hath heretofore lapsed for want of suing out a patent or grant agreeable to the re-

gulations heretofore established and in use within this territory. *Provided also*, That nothing in this act contained shall be construed to prevent or bar any persons, being subjects of this state, and claiming property in any lands therein by conveyance or grant from any nation of Indians, from the right of trial by jury, or a hearing before the general assembly of the state at a future day.

Proviso, for persons claiming under Indian titles.

17. *And be it further enacted by the authority aforesaid*, That if any entry taker shall be desirous to make any entry of lands in his own name, such entry shall be made in its proper place before a justice of the peace of the county not being a surveyor or assistant, which entry the justice shall return to the county court at their next sitting, and the county court shall insert such entry; and every entry made by or for such entry taker, in any other manner than is herein directed, shall be illegal and void, and any other person may enter, survey, and obtain a grant for the same land.

Entry takers how to enter lands for themselves.

CHAP. 115.

An act for establishing courts of law, and for regulating the proceedings therein.

1. **WHEREAS** it is necessary to a due and regular administration of justice, that courts be established in this state;

2. *Be it enacted by the General Assembly of the state of North-Carolina, and it is hereby enacted by the authority of the same*, That from and after the passing of this act, this state shall be, and it is hereby divided into six several districts, *that is to say*, the districts of Wilmington, Newbern, Edenton, Halifax, Hillsborough and Salisbury, in each of which a court for the trial of causes, civil and criminal, shall be established, by the name of the superior court of law in the district, where the same shall be held; and the said courts shall consist of three judges, being men of abilities, integrity, and learned in the law, who shall have cognizance and legal jurisdiction of all pleas, real, personal and mixt; and also all suits and demands relative to legacies, filial portions, and estates of intestates; all pleas of the state, and criminal matters of what nature, degree or denomination soever, whether brought before them by original or mesne process, or by certiorari, writ of error, appeal from any inferior court, or by any other ways or means whatsoever: and they are

State divided into districts, and superior courts established.

a [The districts abolished and six circuits established, in each county of which a superior court to be held, 1806, c. 693.]

hereby declared to have full power and authority to give judgment, and to award execution, and all other necessary process thereupon; and shall have, use, exercise, and enjoy, the same powers and authorities, rights, privileges, and pre-eminences, as were had, used, exercised, and enjoyed, by any former judges in this territory, except where it is, or may be otherwise directed by this, or any other act, or where such authorities, rights, privileges, or pre-eminency, or any of them, may be inconsistent with, or repugnant to, the form of government and constitution by law established: and in case of the death or absence of any of the said judges, it shall and may be lawful for one or more of the same judges, by himself or themselves, to hold any of the said courts, and to take cognizance, and give judgment, and award execution, in the same manner as all the said judges might have done, had they been present. *Provided always*, That demurrers, cases agreed, special verdicts, bills of exception to evidence, and motions in arrest of judgment, shall not be argued but before two (a) or more of the said judges.

One judge may hold a court.

Except in particular cases.

a [One judge is competent to decide upon all cases, 1806, c. 693.]

Appointment of clerks.

Who are to give bond.

b [And a bond in the same sum to collect and account for taxes on suits, 1786, c. 253, s. 12.]

To hold their offices during good behavior.

c [Before the judge or a justice, 1816, c. 903, s.]

d [State oath, 1791, c. 342, s. 1.]

Their oath.

3. And for the benefit of suitors, and to prevent irregularities in making up records, *Be it enacted by the authority aforesaid*, That the said judges shall appoint clerks of skill and probity to the several and respective courts hereby established, who shall each of them give bond, (b) with sufficient security, payable to the said judges, and their successors in office, in the sum of two thousand pounds, for the safe keeping of the records, and the faithful discharge of his duty in office; which said bond shall be lodged in the secretary's office, and may be put in suit on the assignment of the said judges, or their successors, by the party or parties injured, in his or their own name; and shall not become void upon the first recovery, or if judgment be given against the plaintiff, but may from time to time be put in suit, by action of debt, until the whole penalty shall be recovered.

4. *And be it enacted by the authority aforesaid*, That the clerks of the said courts, when so appointed, shall hold their offices during their good behaviour therein; but before entering upon the execution thereof, shall before his excellency the governor (c) take the oath (d) for the qualification of public officers, and also the following oath, *to wit*,

I, A. B. do swear, that by myself, or any other person,

I neither have given, nor will give, to any person or persons whatsoever, any gratuity, gift, fee, or reward, in consideration of my appointment to the office of clerk of the nor have I sold, nor offered to sell, nor will I sell, or offer to sell, my interest in the said office. I also solemnly swear, that I do not, directly or indirectly, hold any other lucrative office in this state. And I do further swear, that I will execute the office of clerk of the for the without prejudice, favour, affection, or partiality, to the best of my skill and ability. *So help me God.*

And if it shall be discovered that any of the said clerks, after his appointment, shall have violated his said oath, or wittingly, willingly, and corruptly, have done any thing contrary to the true intent and meaning of the said oath, such clerk shall be deemed upon conviction guilty of misbehaviour in office, and shall forever afterwards be incapable of holding any office, civil or military, within this state, Penalty on them for misbehavior.

5. *And be it further enacted by the authority aforesaid,* That the said judges, before they act as such, shall in open court, or before the governor (*a*) for the time being, take the oath appointed for the qualification (*b*) of public officers, and also the following oath, *to wit:*

Oaths to be taken by the judges.
a [Or before any judge or justice of the peace, 1806, c. 694, s. 13.]
b [1791, c. 342, s. 1.]

I, A. B. do solemnly swear, that I will well and truly serve the State of North-Carolina, in the office of of the superior courts of law of the said State. I will do equal law and right to all persons, rich and poor, without having regard to any person. I will not wittingly or willingly take by myself, or by any other person, any fee, gift, gratuity, or reward whatsoever, for any matter or thing by me to be done by virtue of my office, except the fees and salary by law appointed. I will not maintain by myself, or by any other, privately or openly, any plea or quarrel depending in any of the said courts. I will not delay any person of common right, by reason of any letter or command from any person or persons in authority to me directed, or for any other cause whatsoever; and in case any letters or orders come to me contrary to law, I will proceed to enforce the law, such letters or orders notwithstanding. I will not give my voice for the appointment of any person to be clerk of any of the said courts, but such of the candidates as appear to me sufficiently qualified for that office; and in all

such appointments I will nominate without reward, the hope of reward, prejudice, favour, or partiality, or any other sinister motive whatsoever. And finally, in all things belonging to my office, during my continuance therein, I will faithfully, truly, and justly, according to the best of my skill and judgment, do equal and impartial justice to the public and to individuals. *So help me God.*

Penalty for acting before qualifying.

And if any of the said judges shall presume to act in his office before he shall have taken the oaths hereby directed, he shall forfeit and pay one thousand pounds, to be recovered by action of debt in any of the superior courts; one half to the use of the state, towards defraying the charges of government, and the other half to the person or persons who shall sue for the same.

Admission of attornies.

7. *And be it further enacted by the authority aforesaid.* That all persons who have heretofore obtained licences to practise as attornies in the courts under the late government, and have been admitted as such, shall hereafter be permitted to practise in such courts in which they were heretofore admitted to practise, without any further examination; and every person who shall hereafter apply for admission to practise as an attorney, shall undergo an examination before two or more judges of the superior (a) courts of this state, and if such person shall be found to possess a competent share of law knowledge, and be a person of upright character, such judges shall give him a certificate, under their hands and seals, to practise in any court of this state for which they may judge him qualified.

a [Supreme court, 1818, c. 963, s. 3.]

Persons coming into this state with intent to practise, how admitted.

8. *And be it further enacted by the authority aforesaid,* That no person coming into this state from any other state, or from any foreign country, with an intention to practise the law, shall by the said judges be admitted to practise as an attorney, unless he shall have previously resided one year in this state; or unless such person shall produce to the said judges a testimonial from the chief magistrate of such state or country, or from some other competent authority, that he is of an unexceptionable moral character; and all such attornies, before they shall be admitted to practise in any court, shall in open court, before the judges thereof, take the following oath, *viz.*

Their oath.

I A. B. do swear, that I will truly and honestly demean

myself in the practice of an attorney, according to the best of my knowledge and ability. *So help me God.*

And upon such qualification had, and oath taken, such attornies, as well as those who have heretofore obtained licences, may act as attornies during their good behaviour.

9. *And be it further enacted by the authority aforesaid,* That all real actions, actions of ejectment, trespass, *quare clausum fregit*, suits on penal statutes, and pleas of the state, shall be commenced in the court of the district (a) wherein the cause of action shall arise, or the offence be committed, and not in any other district; and all actions of debt, other than on penal statutes, all actions of detinue and replevin, actions of account render, assault and battery, and for the unlawful taking of goods, all actions upon the case, and suits for legacies, and for distributive shares of intestates' estates, shall be brought to the court of the district where both parties reside; and where the parties live in different districts, shall be brought to the court of either district, at the option of the plaintiff; and where the plaintiff shall reside beyond seas, or in a different state or government, shall be brought to the court of the district where the defendant resides; and where any action or suit shall be brought otherwise than is herein directed, such action or suit may be abated, on the plea of the defendant.

Actions in what districts to be brought.

a [County, 1806, c. 692.]

10. *And be it enacted by the authority aforesaid,* That no suit shall be originally commenced in any of the said courts for any debt or demand of less value than one hundred pounds, (b) where the plaintiff and defendant live in the same district; or for less than fifty pounds where the parties live in different districts. And if any suit shall be commenced contrary to the true intent and meaning hereof, or if any person shall demand a greater sum than is due, on purpose to evade this act, in either case the plaintiff shall be non-suited, and pay costs. *Provided always,* That if the plaintiff, or any other person for him, will make an affidavit (to be filed in the court) that the sum for which his suit shall be brought is really due, but that for want of proof, or that the time limited for the recovery of any article, bars a recovery, then, and in that case, such plaintiff shall have a verdict and judgment for what appears to be legally proved; any thing herein before mentioned to the contrary notwithstanding. *And provided also,* That nothing herein contained shall extend, or be construed to extend, to suits on bonds,

Of what value suits may be commenced in the superior courts.

b [The superior courts have concurrent jurisdiction with the county courts where the parties live in the same county, 1808, c. 741—1809, c. 765.]

Proviso for the plaintiff to prove his debt.

Not to extend to particular cases.

penal bills, or any other action of debt, grounded on a penalty, where the balance due on such bond or penal bill, or other action of debt, is not of less value than the sums herein before mentioned, to be limited for bringing suits in the said courts.

Penalty on plaintiff for false swearing.

a (1791, c. 338.)

Courts kept up, notwithstanding non-attendance, &c.

b (The sheriff is to keep the court open for 3 days, 1806, c. 694, s. 2.)

Till the first term, writs may bear test immediately.

Day of issuing process to be marked on it.

Process when returnable.

11. *And be it further enacted by the authority aforesaid,* That if any plaintiff or other person, shall hereafter swear falsely, in order to obtain a recovery in any of the said courts, he shall, upon conviction thereof, be adjudged guilty of perjury, and suffer as in cases of wilful and corrupt perjury. (a)

12. *And be it enacted by the authority aforesaid,* That none of the said courts, nor any of the proceedings therein depending, shall be discontinued by reason of the death of any of the said judges, or by their not attending at any term; (b) but in such cases all pleas, causes, matters and things therein depending, shall stand continued and remain in the same condition in which they shall then be, to the next succeeding term.

13. *And be it enacted by the authority aforesaid,* That until the commencement of the first term of each of the said courts, original process may bear test at the time of issuing the same, and such writs and process so tested before such term, shall be valid in law, any usage or practice of courts to the contrary notwithstanding: And after the first term of each court, the clerk or attorney issuing process, shall mark thereon the day on which the same shall be issued, and the sheriff or other officer receiving the same, in order to execute, shall in like manner mark on each process the day on which he shall have received it; and every clerk, attorney, sheriff, or other officer, neglecting so to do, shall forfeit and pay the sum of fifty pounds; to be recovered by action of debt in any court of record having cognizance thereof, by any person who shall sue for the same, with costs.

14. *And be it further enacted by the authority aforesaid,* That all writs and other process (except subpoenas for witnesses returnable immediately,) shall be returned the first day of the term to which the same shall be returnable, and shall be executed at least ten days before the beginning of any term, and if any original or mesne process shall be taken out within ten days before the beginning of any term such process shall be made returnable to the term next succeeding that which shall commence within ten days after taking out such process, and not otherwise; and all process made returnable at any other term, or executed at any other time, or in any

other manner, than by this act is directed, shall be adjudged void upon the plea of the defendant.

15. *Provided, nevertheless,* That nothing herein contained shall be construed to invalidate or vacate any process, warrant or precept, to be issued by any of the judges of the said courts, or any justice of the peace, or clerk of any court, on any criminal prosecution on behalf of the state, but that the same may be issued at any time, and made returnable to any day of the term; and the proceedings on criminal suits and prosecutions shall be agreeable to the practice heretofore in use in this territory, except where the same is or may be otherwise directed, any thing herein contained to the contrary notwithstanding.

Proviso for criminal process.

16. *And be it enacted by the authority aforesaid,* That when any writ shall issue from any of the said courts, whereby any sheriff, or other officer, shall be commanded to take the body of any person or persons, to answer to any action in any of the said courts, such sheriff shall take bond, with two sufficient securities, in double the sum for which such person or persons shall be held in arrest (executors, administrators, and persons sued on such penal (a) statutes as do not expressly require bail, excepted) and shall return such bond with the writ; and in case the sheriff shall fail or neglect to take such bail, or the bail returned be held insufficient, on exception taken and entered the same term to which such process shall be returnable, the sheriff having due notice thereof, he shall be deemed and stand as special bail, and the plaintiff may proceed to judgment, according to the rules herein after prescribed.

Sheriff's duty when process issues to him.

a (For a forfeiture on any penal statute bail is to be taken, 1798, c. 502, s. 6.)

17. *And be it enacted by the authority aforesaid,* That all bail bonds returned to any of the said courts, shall be assigned by the sheriff returning the same, by indorsement thereon in the following form, to wit, "I, A. B. sheriff of county, do hereby assign the within obligation to C. D. the plaintiff therein named, his executors and administrators, to be sued for according to the statute in such case made and provided. In witness whereof, I have hereunto set my hand and seal, the day of , in the year of our Lord one thousand seven hundred and ." And every sheriff failing to make such assignment, shall be deemed, held and taken as special bail, in the same manner as if no bail bond had been returned.

Indorsement of bail bonds returned.

18. *And be it enacted by the authority aforesaid,* That Proceedings

where he returns the body in custody.

when any sheriff shall return that he hath taken the body of any defendant, and committed him to the prison of his county, (which is hereby declared to be the proper prison for such commitment,) the plaintiff may enter the defendant's appearance, and he shall be at liberty to plead as if such appearance had been entered by himself, and the plaintiff may proceed to judgment as in other cases in this act directed; nevertheless the defendant shall not be discharged out of custody, but by putting in bail, or rule of court.

All bail taken special and when liable to recovery.

19. *And be it enacted by the authority aforesaid,* That all bail taken according to the directions of this act, shall be deemed, held, and taken to be special bail, and as such liable to the recovery of the plaintiff; but the plaintiff, after final judgment, shall not take out execution against such bail, until an execution be first returned that the defendant is not to be found in his proper county, and until a scire facias hath been made known to the bail, which scire facias shall not issue till such execution shall have been so returned; and after return of such execution against the principal, and scire facias against the bail, execution may issue against the principal and securities, or any of them, or any of their estates, unless the bail shall surrender the principal before the return of the first scire facias, or shall appear and plead upon the return thereof; any law, custom, or practice, to the contrary thereof, in any wise notwithstanding.

Bail may surrender the principal.

20. *And it is hereby enacted by the authority aforesaid,* That the bail shall have liberty, before final judgment obtained against him, to surrender to the court from which the process issued, or to the sheriff returning such process during the sitting of such court, or to the sheriff in the recess of such court, the principal in discharge of himself; and such bail shall, at any time before such judgment had, have full power and authority to arrest the body of his principal, and secure him until he shall have an opportunity to surrender him to the sheriff who made the arrest, or to the court to which the process was returnable; and such sheriff is hereby required to receive such surrender, and hold the body of the defendant in custody, as if bail had never been given.

21. *And be it further enacted by the authority aforesaid,* That when any scire facias shall by the proper officer be returned to have been made known to the bail, and they in consequence thereof shall appear, they shall be obliged to plead, and the issue shall be tried the same term to

which the process shall be returned, unless sufficient cause be shewn to the court to the contrary; but the bail shall not be admitted to plead *non est factum*, unless they first file an affidavit of the truth of their plea.

22. *Provided nevertheless*, That if any sheriff shall return on a *scire facias* to him directed, that the principal is imprisoned by virtue of any process civil or criminal, the court to which such *scire facias* is returnable shall, on motion of the plaintiff or bail, order and direct that such principal be retained where he or she shall be a prisoner, until the plaintiff's judgment and cost shall be paid, or he or she otherwise discharged by due course of law; a copy of which order being served on the keeper of such prison before such prisoner's releasement, shall be a sufficient authority for him to retain such prisoner until such order be complied with, and shall be deemed a surrender of the principal, and a discharge of the bail.

23. And for the better ascertaining what process shall issue when the sheriff shall return that the defendant is not to be found within his county, *Be it enacted by the authority aforesaid*, That when the sheriff shall make such return in any civil action, the plaintiff may at his election sue out an attachment against the estate of such defendant, or an *alias* or *pluries capias*, until he be arrested, returnable in the same manner as original process; and if the sheriff shall return any goods by him attached, and the defendant shall fail to appear and plead within the time herein directed, the plaintiff shall be entitled, if in an action of debt, to final judgment, and if in an action on the case, to an interlocutory judgment, and in consequence thereof may execute a writ of enquiry the next succeeding term; and the goods so attached, if not replevied or sold, according to the rules herein after prescribed for goods taken on original attachments, shall remain in the custody of the sheriff until final judgment, and then be disposed of in the same manner as goods taken in execution on a writ of *feri facias*; and if the judgment shall not be satisfied by the goods attached, the plaintiff may have execution for the residue.

24. *And be it enacted by the authority aforesaid*, That in case any plaintiff shall obtain judgment final at the first term to which the process shall be returnable on an action of debt, it shall be lawful for him to execute his enquiry as to the value of any foreign currency or money

Scire facias made known, the bail to plead, and be tried the first term.

Proviso where the principal is in gaol, and proceedings thereupon.

Proceedings where the sheriff returns the plaintiff not to be found.

Judgment final the first court, enquiry may be executed as to the value of the currency, &c.

for which the suit may be brought, at the same term in which such judgment shall be entered or obtained.

Where attachment may be issued.

25. *And be it enacted by the authority aforesaid,* That upon any complaint being made, on oath, to any of the judges of the said courts, or to any justice of any of the county courts, by any person or persons, his, her, or their attorney, agent or factor, that any person hath removed, or is removing him or herself out of the county privately, or so absconds or conceals him or herself that the ordinary process of law cannot be served on such debtor, and if such plaintiff, his, her, or their attorney, agent, or factor further swears to the amount of his, her, or their debt or demand, to the best of his, her, or their knowledge and belief, it shall be lawful for such justice, and he is hereby empowered and required, to grant an attachment against the estate of such debtor, wherever the same may be found, or in the hands of any person or persons indebted to, or having any of the effects (*a*) of the defendant, or so much thereof as shall be of value sufficient to satisfy the debt or demand, and costs of such complaint; which attachment shall be returned to the court where the suit is cognizable, and shall be deemed the leading process in such action, and the same proceedings shall be had thereon as on judicial attachments.

a [A garnishee having or owing specific articles, liable for the value, but may give them up, 1793, c. 389, s. 1.]

Bond to be given before attachment granted.

26. *Provided always,* That every such justice, before granting such attachment, shall take bond and security of the party for whom the same shall be issued, his, her, or their attorney, agent or factor, payable to the defendant, in double the sum for which the complaint shall be made, conditioned for satisfying all costs which shall be awarded to such defendant in case the plaintiff shall be cast in the suit, and also all damages which shall be recovered against the plaintiff in any suit or suits which may be brought against him, for wrongfully suing out such attachment; which bond, together with the affidavit of the party complaining, subscribed with his proper name, shall be returned by the justice taking the same to the court to which the attachment is returnable; and every attachment issued without bond and affidavit taken, and returned as aforesaid, shall be abated on the plea of the defendant.

Justices may issue attachments.

27. *And for the ease and convenience of creditors and others who may be injured as aforesaid, and to remove doubts with respect to the authority of the justices of the county courts in issuing attachments; Be it enacted by the*

authority aforesaid, That it shall and may be lawful for any justice of the county courts, upon complaint made to him by any person or persons as aforesaid, to issue attachments under the rules and regulations before mentioned, and make the same returnable to any of the said courts where the same is cognizable ; any law, usage, or custom to the contrary notwithstanding.

27. (a) *And be it enacted by the authority aforesaid*, That when any person who shall be an inhabitant of any other government, so that he cannot personally be served with process, shall be indebted to any person a resident of this state, and hath any estate within the same, any of the said justices may grant an attachment against the estate of such foreign person, under the rules, restrictions, and regulations, before mentioned, and the same proceedings may be had thereon.

In what cases attachment may issue against the estates of persons in other governments.

28. *And be it enacted by the authority aforesaid*, That when any goods, or other estate, shall be attached by virtue of any attachment, whether judicial or original, it shall and may be lawful for the defendant or defendants, his, her, or their attorney, agent or factor, to replevy the same, by giving bond, with sufficient security, to the sheriff, or other officer serving such attachment ; which said bond the sheriff, or other officer, is hereby empowered and required to take, to appear at the court to which such attachment is returnable, and to abide by, perform and satisfy, the order and judgment of such court ; and when the estate attached shall by three justices of the county court, to be summoned by the sheriff for that purpose, be certified on oath to be perishable, and the person or persons to whom it belongs, his, her, or their attorney, agent or factor, shall not within sixty days after the serving of such attachment replevy the same, then such estate shall be sold at public vendue by the sheriff, or other officer, he having first advertised such sale at the courthouse, and other public places in his county, at least ten days before the sale ; and the money arising by such sale shall be liable to the judgment obtained upon such attachment, and deposited in the hands of the clerk of the court to which the process shall be returnable, there to wait the event of such judgment ; and where the sheriff,

Proceedings on attachments.

^a [The repetition of this number was a mistake in the first publication, and was not discovered in the arrangement of this work until many references had been made to the sections of this act as they now stand.]

or other officer, shall serve an attachment in the hands of any person or persons supposed to be indebted to, or supposed to have any of the effects of the party absconding or residing out of this state, he shall at the same time summon such person or persons as a garnishee or garnishees, in writing, to appear at the court to which the attachment shall be returnable, within the first four days of the first term thereof, there to answer upon oath what he or she is indebted to the defendant, and what effects of the defendant he or she hath in his or her hands, and had at the time of serving such attachment, and what effects or debts of the defendant there are in the hands of any other, and what person, to his or her knowledge and belief; and where any attachment shall be served in the hands of any garnishee in manner aforesaid, it shall be lawful, upon his or her appearance and examination, to enter up judgment, (a) and award execution against any such garnishee, (b) for all sums of money due to the defendant from him or her, and for all effects and estate of any kind belonging to the defendant in his or her possession or custody, for the use of the plaintiff, or so much thereof as shall be sufficient to satisfy the debt and costs, and all charges incident on levying the same; and all goods and effects whatsoever in the hands of any garnishee or garnishees belonging to any defendant, (c) shall be liable to satisfy the plaintiff's judgment, and shall be delivered to the sheriff, or other officer serving the attachment; and where any garnishee shall be returned by the sheriff, or other officer, summoned in manner aforesaid, and shall fail to appear and discover, on oath, as by this act is directed, it shall be lawful for the court, after solemnly calling the garnishee, and such court is hereby authorised and required, to enter a conditional judgment against such garnishee, and upon such judgment so entered, a *scire facias* shall issue against such garnishee, returnable the next term, to shew cause, if any he hath, why final judgment should not be entered against him; and upon such *scire facias* being duly executed and returned, if such garnishee shall fail to appear at the next term, and discover, on oath, in manner aforesaid, the court shall confirm such judgment, and award execution for the plaintiff's whole judgment and costs; and if upon the examination of any garnishee, it shall appear to the court that there is any of the defendant's estate in the hands of any person or persons who have not been sum-

a [If he deny having any thing, or make a statement on which judgment cannot be given, the plaintiff may take issue, 1793, c. 389, s. 2.]

b [Any person claiming property may interplead, *ibid.* s. 3.]

c [If the money or articles be due at a future day, conditional judgment may be given, 1794, c. 424, s. 2.]

moned, such court shall, upon motion of the plaintiff, grant a judicial attachment, to be levied in the hands of such person or persons having any of the estate of the defendant in his, her or their custody or possession, who shall appear and answer, and be liable as other garnishees.

29. And whereas divers persons residing in other states or governments, possessed of lands, tenements and hereditaments, in this state, may have contracted, or may contract debts with the inhabitants of this state, without having personal estate in the same to satisfy such debts and damages: and whereas by the policy and genius of our present constitution, lands and tenements ought to be made subject to the payment of just debts, when the debtor hath not within the limits of this state, goods and chattels sufficient to satisfy the same; *Be it therefore enacted by the authority aforesaid*, That all process which heretofore issued against goods, chattels, lands and tenements, shall for the future issue in the same manner, and such as issued only against goods and chattels, shall hereafter issue against lands and tenements as well as goods and chattels: and the sheriff, upon such attachment, execution, or other process, shall proceed to levy the same upon the goods and chattels of the defendant, in the first instance, if any there be; but if to the best of his knowledge there be no such goods and chattels, or not sufficient to answer the plaintiff's demand, he shall execute the same upon the lands and tenements to the amount of the whole debt, or of so much as may remain more than the value of the goods and chattels so found; and such lands and tenements shall be liable, under the restriction aforesaid, to be sold to satisfy the judgment of the plaintiff; and where any sheriff shall have levied process upon lands and tenements, in manner aforesaid, and judgment shall have been thereupon had, he shall not proceed to sell the same, until in the most public place in his bailiwick he shall, forty days at least before the day of sale, have advertised the same.

30. *Provided always*, That it shall be lawful for any person, against whose estate any attachment hath issued as aforesaid, his or her attorney, agent or factor, at any time before final judgment entered, or writ of enquiry executed, upon giving special bail, (a) to replevy the estate so attached, and plead to issue, so that the plaintiff is not thereby delayed of his trial. *And provided also*,

Attachment may be granted against the lands of persons out of the state, and proceedings thereon.

Estate repleviable.

a [Bail are liable to the value of the property only, 1793 c. 389.]

In what cases
judicial process
to issue against
estates of per-
sons out of the
state.

That no judicial process shall be issued against the estate of any person residing without the limits of this state, unless such process is grounded on an original attachment, or unless the leading process in the suit has been executed on the person of the defendant when within the state.

31. And to prevent errors in issuing attachments, and taking bonds thereupon, *Be it enacted by the authority aforesaid*, That the attachment shall be in the following form, *that is to say*,

THE STATE OF NORTH-CAROLINA,

To the Sheriff of _____ *County, greeting :*

Form of the at-
tachment.

Whereas A. B. (or A. B. attorney, agent or factor, as the case may be, of C. D.) hath complained, on oath, to _____, esquire, justice of the superior courts of law, or of the county court of _____, that E. F.

is justly indebted to him (or to the said A. B.) to the amount of _____, and oath having been also made that the said E. F. hath removed, or is about to remove himself out of your county, or so absconds or conceals himself that the ordinary process of law cannot be served on him, (or is an inhabitant of another government, if the case is so) and the said _____ having given bond and security, according to the directions of the act of the general assembly, in such case made and provided : We therefore command you that you attach the estate of the said E. F. if to be found in your county, or so much thereof, replevable on security, as shall be of value sufficient to satisfy the said debt and costs, according to the complaint; and such estate so attached, in your hands to secure, or so to provide that the same may be liable to further proceedings thereupon, to be had at the court to be held for _____ of _____ at _____ on the _____ day of _____ next, so as to compel the said

E. F. to appear and answer the above complaint of the said _____ when and where you shall make known to the said court how you shall have executed this writ. Witness _____, esquire, justice of the said court, at _____ the _____ day of _____, in the _____ year of American Independence.

Which attachment shall be signed and sealed by the justice granting the same. And the bond to be given on

obtaining such attachment shall be in the following form,
to wit,

Know all men, by these presents, that we, all of Form of the
the county of bond., are held and firmly bound
unto bond., in the sum of bond., to be paid to
the said bond., his certain attorney, executors, adminis-
trators, or assigns. For which payment well and truly
to be made, we bind ourselves, and each of us, our and
each of our heirs, executors and administrators, jointly
and severally, firmly by these presents. Sealed with our
seals, and dated the bond. day of bond.,
in the year of our Lord one thousand seven hundred
and bond..

The condition of the above obligation is such, that The condition.
whereas the above bounden bond. hath the day of the
date hereof prayed an attachment, at the suit of bond.,
against the estate of the above named bond., for the
sum of bond., and hath obtained the same, returnable
to the bond. court, to be held at bond., on the
day of bond. next: Now if the said bond. shall
prosecute his said suit with effect, or in case he fail there-
in, shall well and truly pay and satisfy to the said
all such costs and damages as shall be awarded and re-
covered against the said bond., his heirs, executors or
administrators, in any suit or suits which may be here-
after brought for wrongfully suing out the said attach-
ment; then the above obligation to be void, otherwise to
remain in full force and effect.

32. *Provided nevertheless*, That no attachment shall be No attachment
abated for want of form, if the essential matters expres- to be abated for
sed in the foregoing precedent be set forth in such at- want of form.
tachment.

33. *And be it enacted by the authority aforesaid*, That Proceedings on
in all suits commenced or prosecuted by attachment suits on attach-
against the estate of persons residing out of the govern- ments of estates
ment, (a) the court to which the same shall be brought, of persons out
shall stay all proceedings in such suits for so long time as of the state.
they may think necessary, not exceeding one year from

a [If the defendant resides without the district, advertisement is to be made for 3 months after the return, 1793, c. 389, s. 6—and if he reside out of the county, publication to be made for 30 days, in cases before a justice of the peace, 1794, c. 414, s. 15.]

the time of the return of such process, and where it can be conveniently done, notice shall issue from the court to the defendant; and if the defendant appear, put in bail, and plead within the time limited for his appearance—in such case his estate shall be liberated, and the garnishee discharged; and it shall be lawful for the jury to give in damages legal interest upon the plaintiff's recovery, during the time of such extraordinary continuances, even in cases where interest is not usually allowed in the courts.

Rules of court.

34. *And be it enacted by the authority aforesaid, That the following rules and methods shall be observed in the said courts, to wit.*

a [Within the 3 first days of the term, 1786, c, 253, s. 6.]

The plaintiff shall file (a) his declaration in the clerk's office on or before the second day of the term to which his suit shall be brought, and serve the defendant with a copy at least five days before the commencement of such term, otherwise the action may be abated on the plea of the defendant.

The defendant shall appear and plead, or demur, within the first three days of the term to which the writ shall be returnable, otherwise the plaintiff may have judgment by default, which in actions of debt shall be final, unless where damages are suggested on the roll; and in that case, and in all others not herein specially provided for, where the recovery shall be in damages, a writ of enquiry shall be executed at the next succeeding term. *Provided*, That where the nature of the action requires special pleading, the time for pleading may be enlarged.

Where the defendant pleads specially, the plaintiff shall reply or demur within three days, or a *Non Pros* may be entered by the defendant: and if the plaintiff replies, and in his replication tenders an issue, the defendant shall join issue, or demur in three days, otherwise the plaintiff may have judgment; and where the defendant rejoins to the plaintiff's replication, he shall file his rejoinder within three days, or judgment shall go against him, unless the time for pleading shall be enlarged as aforesaid; and the same time shall be given, and rules observed, through the whole course of the pleadings.

Where a special verdict shall be found, a case agreed, a demurrer filed, or a bill of exceptions to the evidence tendered, time shall be allowed, upon motion of either party, to the next term to argue the same.

For the better preservation of the records of the courts

when any cause is finally determined. the clerk of each court shall enter all the proceedings therein in a book well bound, and an entire and perfect record make thereof.

All jury causes shall be first tried.

All motions in arrest of judgment shall be argued within the three last days of the term in which the issue shall be tried, the defendant's attorney first serving the plaintiff's attorney with a copy of the reasons in arrest of judgment the day immediately following that on which such motion shall be made.

Arguments on writs of error, special verdicts, cases agreed, demurrers, petitions for legacies, and distributions of intestates' estates, shall be heard upon the four last days of the term.

No plea in abatement shall be received in any of the said courts, unless the party offering the same shall, by affidavit or otherwise, prove the truth of such plea.

Where a plea in abatement shall be pleaded, and upon argument the same shall be adjudged insufficient, the plaintiff shall recover against the defendant full costs to the time of over-ruling such plea, including the costs of court; and the plaintiff in replevin, or defendant in any other action, may plead as many several matters as may be necessary for his defence, so that he may not be permitted to plead and demur to the whole.

35. *And be it enacted by the authority aforesaid, That* all the statutes (a) of England and Great-Britain for the amendment of the law, commonly called statutes of jeoffails, and which were heretofore enforced in this territory by any act or acts of the General Assembly under the late government, are hereby declared to have continued, and to be now in full force in this state, and shall be duly observed by all judges and justices of the several courts of record within the same, according to the true intent and meaning of the said statutes, unless where the same are or may be altered by this or any other act.

Statutes of jeoffails enforced.

a [1715, c. 5
1778, c. 133.]

36. *And be it enacted by the authority aforesaid, That* for taking the testimony of witnesses in all causes which may be depending in the superior and county courts, the following rules shall be observed and put in practice, *to wit,*

Rules for witnesses.

In all suits where witnesses are to appear at any of the said courts, the clerk, at the request of the party,

shall issue a subpœna, directed to the sheriff, or other officer of the county where such witness or witnesses are said to reside, mentioning the time and place for his, her or their appearance, the names of the parties to the suit, wherein the testimony is to be given, and the party at whose instance such witness or witnesses is or are summoned.

Every subpœna made returnable immediately shall be issued only in term time, and shall be personally served on the witness or witnesses therein named.

A copy of every subpœna issued by the clerks in the vacation, in case the witness or witnesses therein named is or are not to be found, may be left at their usual places of residence; and such copy, certified by the sheriff or other officer, left as aforesaid, shall be deemed a legal summons, and the person or persons therein named shall be bound to appear in the same manner as if personally summoned.

To attend till discharged.

a [20l. by the scale, and if he proves that he could not attend, the court may remit the forfeiture & costs, 1799, c. 528.]

Proviso where the suit is settled.

37. *And be it enacted by the authority aforesaid,* That every witness being summoned to appear in any of the said courts, in manner as herein before directed, shall appear accordingly, and continue to attend from term to term, until discharged by the court, or the party at whose instance such witness shall be summoned; and in default thereof shall forfeit and pay to the party at whose instance the subpœna issued, the sum of fifty pounds, (*a*) and shall be further liable to the action of such party, for the full damages which may be sustained for want of such witness' testimony, who shall recover the same by scire facias, with costs.

38. *Provided always,* That if it shall so happen that the suit depending shall in the vacation be accommodated and settled between the parties, and the party at whose instance such witness was summoned should neglect or omit to discharge him or her from further attendance, and he or she, for want of such discharge, should attend at the next term, then and in that case, the witness, upon oath made of the facts, shall be entitled to a ticket from the clerk, in the same manner as other witnesses, and shall recover from the party at whose instance he was summoned, the same allowance which by this act is given to witnesses for their attendance at said court, with costs.

Penalty for false swearing.

Provided also, That if any witness shall hereafter swear falsely, in order to obtain a ticket, he shall upon conviction be adjudged guilty of perjury, and suffer as in cases

of corrupt and wilful perjury. *And provided further,* That if sufficient cause be shewn by the person so summoned, and failing to appear, of his or her incapacity to attend at the time and place mentioned in the subpæna, then no forfeiture or penalty shall be incurred by such failure; but if on notice given by the court, sufficient cause be not shewn at the next succeeding term after such failure, it shall and may be lawful for such court, on motion, to grant judgment, and award execution, for the forfeiture before mentioned, against the person so summoned and failing to appear as aforesaid.

39. *And be it further enacted by the authority aforesaid,* That when any person who may be a witness in any cause in any of the said courts, shall reside out of this state, or shall by reason of age, bodily infirmity, or any other cause, (a) be incapable of attending to give his testimony in court, oath thereof being made, or the truth of the matter otherwise appearing, the judge or judges of the court wherein such suit is depending shall and may, by commission, empower such and so many persons as may be thought necessary to take and receive the deposition of such witness, which being duly taken and returned as herein after is directed, shall be received as legal testimony.

40. *Provided always,* That the party praying such commission shall give such notice to the adverse party of the time and place when and where such commission is to be executed, as the court shall think proper; and the adverse party shall have power to cross examine any witness whose deposition shall be so taken, and all depositions otherwise taken than as herein is directed, unless by consent of parties, shall be void to all intents and purposes.

41. *And be it further enacted by the authority aforesaid,* That if any person who may be a witness in any cause depending in any of the said courts, shall be under a necessity of leaving this state before such cause is to be tried, or even before such cause shall be at issue, upon oath thereof made before any of the justices of the said courts, such justice is hereby empowered to order the clerk of the court where such cause is depending to issue a commission to one or more persons to take the deposition of such witness, notice being first given to the adverse party of the time and place when and where such

Proviso for incapacity to attend.

[See 1799, c. 528.]

Commissions to take testimony to be granted in certain cases.

[See sec. 41.]

a [In a dangerous state of health or about to leave the state; and the notice prescribed, 1803, c. 603.]

Proviso for the adverse party to have notice.

Persons leaving the state, their depositions may be taken.

See sec. 39.

deposition is to be taken, at least ten (*a*) days previous to the time of executing such commission; which deposition when returned, taken in manner aforesaid, shall be received as legal evidence.

Penalty for refusal to give evidence.

Proviso for Quakers.

[See 1777, c. 108, s. 4, & 1819, c. 1019.]

Negroes, &c. no witnesses, except against each other.

Witnesses to attend till discharged.

b [407, by the scale.]

c (Then he may be released from the costs as well as the forfeiture, 1801, c. 391.)

Witnesses' privilege.

42. *And be it further enacted by the authority aforesaid,* That if any person who shall be summoned as a witness in any of the said courts, or before any persons appointed to take depositions as aforesaid, shall refuse to give testimony on oath, such person so refusing shall by the court, or by the commissioner before whom he shall be summoned, be committed to the common prison, there to remain, without bail or mainprize, until he shall be willing to give testimony, in such manner as the law doth or may direct. *Provided,* The people called quakers shall have the liberty of giving their testimony by way of solemn affirmation, in all causes whatsoever, criminal as well as civil. *And provided also,* That all negroes, Indians, mulattoes, and all persons of mixed blood, descended from negro and Indian ancestors, to the fourth generation inclusive (though one ancestor of each generation may have been a white person) whether bond or free, shall be deemed and taken to be incapable in law to be witnesses in any case whatsoever, except against each other.

43. *Be it enacted by the authority aforesaid,* That every witness being summoned to appear in any of the said courts on a criminal prosecution, or plea of the state, shall appear accordingly, and continue to attend from day to day until discharged by the court, the attorney for the state, or the party at whose instance he shall be summoned; and in default thereof, shall forfeit and pay the sum of one hundred pounds. (*b*) for the use of the State, unless upon notice issued and made known, sufficient cause (*c*) be shewn for such failure at the next succeeding term.

44. *And be it further enacted by the authority aforesaid,* That during the attendance of any person summoned as a witness to any court whatsoever, and during the time that such person is going to, and returning from the place of such attendance, allowing one day for every twenty-five miles such witness has to travel to and from his place

a [If the adverse party do not reside or be not more than ten miles distant, three days; in all other cases, one day more for every additional ten miles, which the party may be distant from the place of taking the deposition, 1803, c. 633.]

of residence, no sheriff or other officer shall serve or execute on any person so attending, going to, or returning from such court, any writ or process, warrant, order, judgment, or decree, in any cause (summons for witnesses excepted) and if any such shall be executed, the same shall be, and is hereby declared null and void.

45. *And be it further enacted by the authority aforesaid,* That for every mile any witness shall travel, either going to or coming from the court to which such witness shall be summoned to appear, there shall be paid to him, by the party at whose instance the subpoena shall have issued, two pence halfpenny per mile, together with the necessary ferriages, and six (a) shillings per day for every day he shall attend, until he shall have given testimony, or shall be discharged. *Provided,* That in any bill of costs there shall not be allowed the charge of more than two witnesses to any particular matter of fact.

Their allowance for attendance.
a [6s. per day, & 6s. for every 30 miles travelling if in the county; if out of the county 10s, 1816, c. 694, s. 19.]

46. *And be it enacted by the authority aforesaid,* That the clerks of the said courts are hereby empowered and directed to take probate of all evidence tickets upon oath, and certify the same. (b)

Clerks to take probate of evidence tickets.

47. *And be it further enacted by the authority aforesaid,* That the said courts shall have power and authority to grant writs of error (c) for correcting the errors of any inferior court, and the party praying such writ, before the same shall issue, shall assign error, and give bond and security, to the satisfaction of the court, to abide by, perform and fulfil, the judgment which shall be given thereon by such court; and if upon argument of any writ of error, or trial of any appeal from an inferior court, the judgment or decree of the inferior court shall be reversed, the superior court shall grant judgment, or make such decree thereupon, as should have been made up or entered in such inferior court, and shall and may issue execution thereupon, without granting a writ of *procedendo*; and to prevent the obtaining of writs of error by surprise, the party praying such writ in a civil cause, shall give notice in writing to the adverse party, at least ten days before motion, of his intention to move for such writ, and no such writ shall be granted without affidavit of such notice.

Writs of error granted.

b [The witness may recover against the party who summoned him, 1796, c. 458.]

c [A writ of error must be brought within 5 years from the rendition of the judgment, 1801, c. 590.]

48. *And be it further enacted by the authority aforesaid,* That where in any of the late superior courts or in any of the late courts of *oyer and terminer* and general gaol delivery before mentioned, any recognizance has been for-

Forfeited recognizances in the late courts how levied,

feited, or any fine imposed, and not hitherto levied or paid, it shall and may be lawful for the courts hereby established, in their respective districts, to issue execution for levying the same, after the party has been served with a *scire facias*, and judgment awarded against him; and on all recognizances which shall hereafter be forfeited, and on fines, which shall hereafter be imposed in any of the superior courts, the same process shall issue, and the fine or forfeiture be levied in the same manner, unless sufficient cause can be shewn, on the return of the *scire facias*, why such fines or forfeitures should be discharged, or mitigated by the court. (a)

a [For relief from forfeitures, see 1788, c. 292, s. 1—1795, c. 442.]

Commission of oyer and terminer may be issued.

49. And whereas many of the prisons within this state are insufficient for the retention of persons who may commit offences against the same, and the peace and good government thereof; therefore, for the speedy trial of such offenders, *Be it enacted by the authority aforesaid*, That the governor or commander in chief for the time being, is hereby empowered and required, by and with the advice of the council of state, as often as it shall be found necessary, to issue a commission to the justices (b) of the superior courts of this state, empowering them, or any of them, to hold a court of sessions of the peace, *oyer and terminer* and general gaol delivery, for the trial of such offenders; and to hear, try and determine, all crimes and misdemeanors (c) of what nature or kind soever, wherewith such offenders, or any of them, shall stand charged, and to give judgment, and award execution thereon.

b [Who may issue a venire to summon jurors, 1779, c. 157, s. 13.]

c (And cases of insurrection of slaves, 1816, c. 912, s. 5.)

Time not allowed in plea of limitation. [Sec 178, c. 187, s. 8.]

Justices continued till the next county courts.

50. *And be it further enacted by the authority aforesaid*, That the time elapsed since the sixth day of March, one thousand seven hundred and seventy-three, until the end of the present session of this General Assembly, shall not be allowed of in the superior courts hereby established in any plea of limitation, or in the computation of time allowed for proving accounts, under the act for ascertaining the method of proving book debts.

51. *And be it further enacted by the authority aforesaid*, That the justices of the peace appointed by this General Assembly at their last session, and who qualified as such, shall have and hold, and may exercise the powers of justices of the peace until the sitting of the next county court of their respective counties.

Justices to take the oaths of the state.

52. *And be it further enacted by the authority aforesaid*, That every person nominated and appointed a justice of

peace, and justice of any county court, before entering upon and executing the said offices, shall publicly, in the court-house of his county, on a court day, take the oaths (a) appointed, or which shall be appointed by the General Assembly, for the qualification of public officers, and also the following oath, *to wit*,

a [See 1791, c. 342, s. 1.]

I, A. B. do solemnly swear, that as a justice of the peace, and a justice of the county court of pleas and quarter sessions in the county of _____, in all articles in the commission to me directed, I will do equal right to the poor and to the rich, to the best of my judgment, and according to the laws of the state. I will not, privately or openly, by myself or any other person, be of counsel in any quarrel or suit depending before me; and I will hold the county court and quarter-sessions of my county as the statutes in that case shall and may direct. The fines and amerciaments that shall happen to be made, and the forfeitures that shall be incurred, I will cause to be duly entered, without concealment. I will not wittingly or willingly take by myself, or by any other person for me, any fee, gift, gratuity, or reward whatsoever, for any matter or thing by me to be done by virtue of my office, except such fees as are or may be directed and limited by statute; but well and truly I will do my office of a justice of the peace, as well within the county court of pleas and quarter-sessions as without. I will not delay any person of common right, by reason of any letter or order from any person or persons in authority to me directed, or for any other cause whatever; and if any letter or order come to me contrary to law, I will proceed to enforce the law, such letter or order notwithstanding. I will not direct, or cause to be directed, any warrant by me to be made to the parties; but will direct all such warrants to the sheriff or constables of the county, or other the officers or ministers of the state, or other indifferent persons, to do execution thereof. And finally in all things belonging to my office, during my continuance therein, I will faithfully, truly and justly, according to the best of my skill and judgment, do equal and impartial justice to the public and to individuals. So help me God.

The oath,

And if any person whatsoever shall presume to execute the office of a justice of the peace, or the office of

Penalty for acting without qualifying.

a justice of any county court, without first qualifying himself in the manner by this act required, he shall for every such offence forfeit and pay the sum of one hundred pounds, one moiety thereof to the state, towards the support of government, and the other moiety to him or them who will sue for the same; to be recovered, with costs, by action of debt, in any court where the same may be cognizable.

Courts how long
to sit.

53. *Provided nevertheless*, That if the business of any of the said courts cannot be determined on the day of the term, the justices may adjourn from day to day, not exceeding six days; at the end of which time the causes and matters which may be depending before them, and not then finally determined, shall be continued to the next succeeding term.

One justice may
adjourn.

54. *Provided also*, That if by reason of indisposition, or other inability, bad weather, or other accidents, it shall so happen that a sufficient number of justices shall not meet for holding the said courts, or any of them, on the days by this act appointed, in such case it shall and may be lawful for any one justice to adjourn the court whereof he shall be a member, from day to day, not exceeding three days, until a sufficient number of justices can attend to hold the court.

Courts or pro-
cess not discon-
tinued.

55. *And be it further enacted by the authority aforesaid*, That none of the said county courts, nor any process in any of them depending, shall be discontinued for or by reason of the justices' failing to hold court upon the day by law appointed, or of any alteration of any of the days appointed for holding the said courts, but in every such case, all such process, matters, and things depending, shall stand continued, and all appearances upon returns of process shall be made to the next succeeding term in course, in the same manner as if such succeeding term had been the same term to which such process had stood continued, or such returns or appearances had been made; and all recognizances, bonds, and obligations for appearances, and all returns, shall be of the same force and validity for the appearance of any person or persons at such succeeding term, and all summonses for witnesses as effectual, as if the next succeeding term had been expressly mentioned therein.

Court's power.

56. *And be it enacted by the authority aforesaid*, That the justices of the said county courts of pleas and quarter sessions, or any three of them, shall and may

take cognizance of, and are hereby declared to have full power and authority, and jurisdiction, to hear, try and determine, all causes whatsoever at the common law, within their respective counties, where the debt, damages, or cause of action is above five pounds, (actions of trespass in ejectment, formedon in descender, remainder and reverter, dower, partition, perjury, and such felony and criminal causes where the judgment, upon conviction, shall be for the loss of life, limb, or member, excepted) (a) and all petit larcenies, assaults, batteries, and trespasses, (other than such trespasses where the title of freehold may come in question,) breaches of the peace, and other misdemeanors of what kind soever, of an inferior nature; and all actions of detinue, trover, and on penal statutes, suits for filial portions, legacies, and distributive shares of intestates' estates, and all other matters relating thereto; (b) and the said justices of the peace, and every of them, during their continuance in office, as well within their county courts of pleas and quarter sessions as without, shall have full power and authority as amply and fully, to all intents and purposes, as any justice of the peace in this territory had, or ought to have had, by virtue of any act or acts of assembly heretofore made under the late government to preserve, maintain, and keep the peace within their respective counties.

57. *And be it further enacted by the authority aforesaid,* That the said courts of pleas and quarter sessions shall and may, within their respective counties, take the probate of wills, (c) and order the same to be recorded in proper books to be kept for that purpose; and the said courts shall and may make orders for issuing letters testamentary, and letters of administration, which letters shall be signed and issued by the clerk of the said court, and may by summons, upon application to them made, compel any person or persons whatsoever within their respective counties, having in their possession any will or testament of any deceased person, to exhibit the same to the court for legal probate (d) thereof; and whoever being legally summoned, shall, in contempt of the court, refuse to produce any such will in his or her possession, or having been in his or her possession shall refuse to inform the court, on oath, where such will then is, or in what manner he or she hath disposed of the same, such person shall, by order of court, be committed to the common prison of the county, there to remain, without bail or

The jurisdiction since enlarged.

a [From this exception ejectment, dower, formedon, and partition are taken by 1785, c. 233, s. 1.]

b [Lunatics are added by 1784, c. 228—1801, c. 589; forfeited recognizances, by 1788, c. 292, s. 2; fines by 1801, c. 593; roads and ferries by 1784, c. 227.]

May take probate of wills.

c [Attested copies are evidence except in cases of fraud, 1784, c. 225, s. 6.]

d [As to the mode of probate see 1789, c. 308, s. 1—1802, c. 623—1784, c. 225, s. 5—1784, c. 204.]

mainprize, until such will shall be produced, and due submission made to the court for the contempt; and the court shall, and is hereby empowered, in case of such person's removal, to issue such summons and process for commitment, into any county in this state.

Right of appeal.

58. *Provided always*, That if any person who shall claim a right to execute any will, or to administer the estate of any intestate, and shall think himself injured by order of court for letters testamentary or of administration, shall be entitled to an appeal to the superior court of the district where such order shall be made, subject to the same regulations as in other cases of appeal; and such superior court is hereby declared to have cognizance thereof, and shall, at their sitting next succeeding such appeal, determine the same, and upon such determination had, such court shall proceed to grant the letters to the persons entitled to the same, he or she giving bond, with sufficient security for the faithful discharge of the trust.

Wills, &c. to remain among the court records.

59. And for the better preservation of wills and other papers relating to the estates of deceased persons, *Be it enacted by the authority aforesaid*, That all original wills, inventories and accounts of executors and administrators, shall remain in the clerk's office among the records of the respective counties where the same shall be proved or exhibited; and to the said wills, inventories and accounts, any person may have access as to the other records, except for the time they shall or may be removed before any other court upon the determination of any controversy.

Clerks to be appointed for vacancies.

a (A majority of the justices. 1794, c. 423; & must have a majority of the votes present, 1816, c. 901.)

To give bond.

60. *And be it further enacted by the authority aforesaid*, That where any vacancy now is, or shall hereafter happen in the office of county clerk, the court of pleas and quarter-sessions of the county (*a*) where such vacancy shall be shall appoint a person of skill and probity to fill such vacancy; and all clerks of the said courts shall hold their offices during their good behaviour therein.

b (To give another bond in 2000*l*. for the duties enjoined by 1786, c. 253.)

61. *And be it enacted by the authority aforesaid*, That the clerks of the several county courts of pleas and quarter-sessions, at the first court to be holden in their respective counties after the expiration of this present session of the general assembly, shall each give bond, (*b*) with sufficient security, in the sum of two thousand pounds, payable to the justices of the said courts respectively, and their successors in office, for the safe keeping the records

and the faithful discharge of his duty in office; which said bond shall be lodged in the secretary's office, and may be assigned and put in suit, and recovery had in the same manner, and according to the like rules and restrictions as are herein before prescribed for suits on bonds given by clerks of the superior courts; and each of the said county court clerks shall at the same time, take and subscribe the oath appointed to be taken for the qualification of public officers, and the oath of office herein before directed to be taken by clerks of the superior courts: and the offences herein before mentioned of any candidate or person in nomination for the office of clerk of any of the said county courts, shall incur the same incapacities, and the violation of the oath of office in the particulars herein before specified, shall, on conviction, be attended with the same penalties, incapacities and disabilities, as are in like cases to be inflicted on clerks of the superior courts, or candidates or persons in nomination for such clerkships for such offences and violation.

62. *And be it enacted by the authority aforesaid,* That the county courts are hereby authorised and required to appoint an attorney, properly qualified, to act for and in behalf of the state in each respective county within this state, who shall hold his office during good behaviour, and shall and may prosecute all matters cognizable in the county court of pleas and quarter-sessions wherein he shall be appointed, for and in behalf of the state.

County courts to appoint an attorney.

62. *And be it enacted by the authority aforesaid,* That all debts and demands of five pounds, and under, where the balance due on any specialty, contract, note or agreement, or for goods, wares and merchandizes sold and delivered, or work and labour done, are hereby declared to be cognizable and determinable by any one justice of the peace, who may give judgment, (a) and thereupon award execution against the goods and chattels or body of the debtor, which shall be executed and returned by the sheriff, constable or other officer, to whom the same may be directed, in the same manner as other writs of *fieri facias* or *capias ad satisfaciendum* are to be executed and returned.

All debts of 5*l.* or under, cognizable before one justice.

a (Jurisdiction progressively increased by 1785, c. 233, s. 1—1786, c. 253, s. 7—1794, c. 414, s. 1—1802, c. 609, s. 1—1803, c. 627, s. 1.)

63. *Provided nevertheless,* That if either of the parties shall be dissatisfied with the judgment given by such justice, he may appeal to the next county court of pleas and quarter sessions, first giving security for prosecuting such appeal with effect; and the cause shall be re-heard and finally determined by the justices the same court, without

Right of appeal.

any further process, in a summary way without a jury ; and judgment shall be given thereupon, and the party cast shall pay the cost of all the proceedings, to be taxed by the court.

When to be made.
a (10 days allowed to give security for an appeal or stay, 1812, c. 832.)
Justice that tries the cause, to summon witnesses, but not sit on the appeal.

Attachment returnable to court.

64. *Provided also*, That the cause shall be tried by, and the appeal made from such justice, five days (a) at least before the term to which the appeal shall be made, otherwise the cause shall be continued to the next succeeding term. *And provided further*, That the justice before whom the suit was first heard shall, at the request of the respective parties, summons such witnesses to court as they shall name, but shall not sit in court or give judgment on the appeal.

65. *And be it further enacted by the authority aforesaid*, That every justice of the county courts shall have power, and they are hereby authorised and required, upon any complaint being made by any person or persons, for any debt or damage, matter or thing, cognizable in the county courts of pleas and quarter sessions of this state, to grant an original attachment against the estate of any person absconding or concealing himself, or removing out of the county privately, returnable to the court of such county, observing therein the rules and restrictions directed for granting original attachments in the superior courts ; and all sheriffs and coroners shall execute and return the same, and observe the rules and directions appointed to be observed in executing attachments returnable to the superior courts ; and the like judgment, recovery, remedy, relief, and proceedings, shall be had thereupon, as in the like cases are grantable in the said superior courts.

Attachment granted by a Justice.

δ The proceedings regulated by 1794, c. 414, s. 7, 8, 9, 10, 11, 12, 13, 14, 15, 16.)

66. *And be it further enacted by the authority aforesaid*, That any one justice of the peace, in cases where by this act he has jurisdiction, may issue an original attachment (b) against the estate of any absconding or absent debtor, upon the oath of the plaintiff, his agent or attorney, directed to the sheriff or any constable of the county, first taking sufficient security, as in other cases of attachments ; and the proceedings thereon shall be in a summary way, in the same manner as on a warrant, and the defendant may replevy the goods attached, and either party may appeal from the judgment of the justice, in manner as is herein before directed.

Process how issued and returned.

67. *And be it further enacted by the authority aforesaid*, That all original process, and all subsequent process

thereupon, to bring any person or persons to answer to any action, suit, bill or plaint, in any county court of pleas and quarter sessions (except sub pœnas for witnesses, which in term time may be made returnable immediately) shall be issued by the clerk of such court, and shall be returnable to the first day of term, and shall be executed at least five days before the return thereof; and if any person takes out any writ or process while such court is sitting, or within five days before the beginning of the term, such writ or process shall be made returnable to the term next after that then held, or to be held within five days as aforesaid, and not otherwise; and all writs and process issued, made returnable, or executed in any other manner, or at any other time, than is herein before directed, may be abated upon the plea of the defendant.

68. *Provided always*, That nothing herein contained shall extend or be construed to extend to invalidate or vacate any writ, process, warrant, or precept issued by a justice, or other officer having jurisdiction thereof, on any criminal prosecution, or in behalf of the state, but the same may be made returnable to any day in the term; and the proceedings in all criminal cases shall be had according to the laws and statutes of this state, and in the mode heretofore practised within the limits thereof, under the laws formerly in use therein.

69. *And be it further enacted by the authority aforesaid*, That when any writ or process shall issue to take the body or bodies of any person or persons, to answer to any plaintiff in any civil action in any county court of pleas and quarter sessions, the sheriff shall return therewith a bail bond, with two sufficient securities, for double the sum for which the person or persons shall be held in arrest (executors and administrators, and persons sued on such penal statutes (*a*) as do not expressly require bail, excepted) to the clerk on or before the first day of every term; and if the sheriff shall not return bail, or the bail returned be held insufficient, upon exception taken thereto, and entered on the docket, the same term to which the writ shall be returnable, and notice given that term to the sheriff to justify, then, and in such case, the sheriff shall be held and stand as special bail for the defendant, and the plaintiff may proceed to judgment, according to the rules herein after mentioned; and the plaintiff, on recovery, may take out execution against the defendant or sheriff, or both, any law, usage, or custom to the

Proceedings where process issues to the sheriff in civil cases.

a (Bail must be taken for a forfeiture on penal statutes, 1798, c. 502, s. 6.)

contrary notwithstanding. *Provided always*, That if the defendant puts in bail before the time to plead by the rules hereafter mentioned is expired, then the sheriff shall be discharged. *Provided also*, That the sheriff may surrender the defendant in discharge of himself, at any time before final judgment obtained against the said bail.

Execution to issue to any county after judgment.

70. *And be it further enacted by the authority aforesaid*, That where any judgment or decree shall be obtained in any county court of pleas and quarter sessions for any debt, damages, portion, legacy or distributive share of an intestate's estate, and the person against whom such judgment or decree shall be obtained, shall remove him or herself and effects, or shall reside out of the limits of the jurisdiction of such court, it shall be lawful for the clerk of the court where such judgment shall be given, or decree made, at the request of the plaintiff, to issue execution to any county of this state, where the defendant or his goods may be found, and the sheriff or other officer to whom the same may be directed, is hereby empowered and required to execute the same, and make return thereof, in the same manner as is directed for the returns of process issuing from the superior courts.

Proceedings where non est inventus is returned.

71. *And for the better ascertaining what process may be issued where the sheriff shall return that the defendant is not to be found in his county, It is hereby enacted*, That when any sheriff shall make such return, the plaintiff in any civil action may take out an attachment against the estate of such defendant, returnable as is herein before directed for the return of other process, thereupon to enforce an appearance, or an *alias* or *pluries capias*, until such defendant be arrested, at the election of the plaintiff; and if the sheriff shall return such attachment executed, the plaintiff shall file his declaration according to the rules of the court, and proceed as in other cases.

Proceedings on attachments the same as in the superior courts.

72. *And be it further enacted by the authority aforesaid*, That the same rules, method and proceedings, shall be had, kept and observed, by the said county courts of pleas and quarter sessions, and the officers thereof in granting, issuing, executing and returning process, and awarding judgment on judicial attachments, and the like remedy, recovery, and relief, against the sheriffs and bail, as in like cases are provided by law in suits de-

pending, or to be commenced in the superior courts of law.

73. And for the regular prosecution and determination of suits, entering up judgments, and preservation of the records in the said county courts of pleas and quarter sessions, *Be it enacted by the authority aforesaid, That the following rules and methods shall be observed, to wit.* Rules of court.

The plaintiff in every suit shall file his declaration on the first day (a) of the term, or first calling of the cause in court, and shall also serve the defendant, or his attorney, with a copy thereof, at least five days before the term.

a (Within the 3 first days, 1786. c. 253, s. 6.)

If the plaintiff fails to file his declaration, or to appear and prosecute his suit, the defendant may enter a *Non Pros.*

The defendant shall enter his appearance and file his plea in writing, whether general or special, the first term, and if he fails so to do, the plaintiff shall have judgment, which in actions of debt shall be final, except where damages are suggested on the roll; in which case, and in all others where the plaintiff is to recover in damages, a writ of enquiry shall be executed the next succeeding term.

The defendant may plead as many several matters as he may think necessary, so that he be not admitted to plead and demur to the whole.

All issues, whether general or special, shall be heard and tried the next succeeding term after the issue shall be made up, unless sufficient cause be shewn to the court why such causes should be continued.

All jury causes at issue shall be first heard and tried.

Every motion in arrest of judgment shall be argued the last day of the term in which the issue shall be tried, the defendant's attorney first serving the plaintiff's attorney with a copy of the reasons in arrest of judgment; unless upon sufficient reasons shewn, and approved of by the court, further time shall be allowed.

When a special verdict shall be found, a case agreed, a demurrer filed, or a bill of exceptions to the evidence tendered, time shall be allowed, at the motion of either party, to the next succeeding term.

74. And for prevention of vexation by dilatory pleas, *It is hereby enacted by the authority aforesaid. That no plea in abatement shall be received in any action or suit in the said county courts, unless the truth thereof be suf-*

Provision for the prevention of dilatory pleas.

ficiently shewn to the court by affidavit or otherwise, and in all actions where the declaration shall plainly set forth sufficient matter of substance for the court to proceed upon the merits of the cause, the suit shall not abate for want of form in the proceedings ; and when any plea shall be pleaded in any action, and upon argument thereof, the same shall be adjudged insufficient to abate such action, the plaintiff shall recover against the defendant full costs to the time of over-ruling such plea, including the costs of court.

Appeals granted.

a (Regulated by 1785, c. 233, 1801, c. 574, s. 4—1807, c. 713.)

75. And for granting appeals (*a*) from the county court of pleas and quarter sessions to the superior courts, *Be it enacted by the authority aforesaid*, That when any person or persons, either plaintiff or defendant, shall be dissatisfied with the sentence, judgment or decree, of any county court, he may pray an appeal from such sentence, judgment or decree, to the superior court of law of the district wherein such county court shall be ; but before obtaining the same, shall enter into bond, with two sufficient securities, for prosecuting the same with effect, and for performing the judgment, sentence and decree which the superior court shall pass or make thereon, in case such appellant shall have the cause decided against him.

Writs of error granted.

76. And because it may happen that in issuing process, carrying on the proceedings, and rendering judgments in the said county courts, there may be error to reverse judgment ; *Be it enacted by the authority aforesaid*, That when any person shall be desirous to prosecute a writ of error, he shall move the county court of pleas and quarter sessions where such suit is or hath been depending, to allow a writ of error, he first entering into bond as before directed in cases of appeals ; and the court is hereby empowered and required to allow thereof, as if such writ of error should be then and there produced from the superior court.

Appeals how prosecuted.

b (If the appellant cannot file it in time on account of a vacancy in the office, it may be filed on application to the superior court, 1816, c. 903, s. 3.)

77. And for prosecuting appeals, *Be it enacted by the authority aforesaid*, That when any person shall have appealed to a superior court in manner above directed, a transcript of the record of the suit on which the appeal shall be made, shall be delivered to the clerk of the superior court at least fifteen (*b*) days before the sitting of the term, and shall by him be filed the same day on which he receives the same ; and if the trial of the county court was of an issue to the country, a trial *de novo* shall be had, and if on a hearing on a petition for a filial portion

or legacy, or distributive share of an intestate's estate, or other matter relating thereto, a re-hearing at the superior court, without notice given by either party; and if such transcript of the record is not filed within the time aforesaid, or if the appellant shall fail to appear, or to prosecute his appeal, then the judgment, sentence or decree of the county court shall be affirmed, and the appellant shall pay double costs (a) in the superior court.

a [And 12 1-2 per cent. 1785, c. 233, s. 2.]

78. And for prosecuting writs of error, (b) *Be it enacted by the authority aforesaid*, That the following method of practice shall be observed, *that is to say*, A transcript of the records and proceedings in the county court, in the suit in which any writ of error shall be granted or allowed, shall be transmitted and delivered to the clerk of the superior court, at least fifteen days before the sitting of the term; and in case the plaintiff in error shall neglect to file such writ, and assign error as aforesaid, or shall fail to appear, or to prosecute the same, then the judgment of the county court shall be affirmed, and he shall be adjudged to pay double costs in the superior court.

Writs of error how prosecuted.

b [Must be brought within 5 years, with the common exceptions, 1801, c. 590.]

79. *Provided always*, That if it shall so happen that there shall not be thirty days between the last day of the term or hearing in the county court, and the next term of the superior court to which such appeal shall be made, or writ of error allowed, then such appeal or writ of error shall be continued, and a transcript of the records and proceedings shall be transmitted and filed in like manner in the office of the superior court, the term succeeding that which shall immediately follow such county court term, in which such trial and hearing shall be had as aforesaid.

Proviso, where there shall not be 3 days between the last day of the term and the sitting of the superior court.

80. *And be it further enacted by the authority aforesaid*, That in every county court of pleas and quarter sessions within this state, when any appeal shall be granted, or writ of error allowed, the clerk of such court shall immediately make up a full and perfect record of all the proceedings in such cause, and shall within ten days after the final adjournment of the term in which the cause shall be heard, give an attested copy of such record, with a taxation of all costs accrued, to the appellant, or plaintiff in error, if required, and shall endorse on such copy the day or days on which the same may have been demanded, and the day on which it shall be delivered, and sign his name as clerk thereto; and if by reason of the

On appeals, clerks to make up a record of proceedings for the appellant.

delay of any clerk, any transcript shall not be filed in time, or that the record is so erroneously or inartificially made up, that the superior court cannot proceed thereon, such clerk, in any of the said cases, shall, upon trial, be adjudged guilty of misbehavior in office, and shall forfeit and pay to the person entitled to such attested copy the sum of fifty pounds, to be recovered by action of debt, in any court having cognizance thereof; and shall be further liable to an action on the case for all damages which such person may sustain for the want of such copy.

Appeal not to be dismissed for want of form, if sufficient matter in the transcript.

81. *Provided always*, That if the judge or judges of the superior court should be of opinion that there appears to be sufficient matter of substance in the transcript of the record and proceedings, on any appeal or writ of error, to enable them to proceed thereon, the same shall not be dismissed for want of form, any thing herein contained to the contrary notwithstanding.

Duty of the clerks of the superior courts on receiving transcripts of records on appeals.

82. *And be it further enacted by the authority aforesaid*, That the clerks of the superior courts respectively, upon receiving a transcript of the record and proceedings in any suit, on which an appeal shall be made, or writ of error allowed, shall give a receipt to the person delivering the same, and shall immediately endorse thereon the day on which it shall be delivered; and if he receives it fifteen days before the sitting of the term of the then next superior court, he shall enter it upon the docket of causes for trial, and deliver to the parties such summonses for their witnesses as they may require; but if such transcript shall be delivered to the clerk of the superior court within fifteen days before the sitting of such term as aforesaid, then such clerk shall enter the cause on the reference docket of such court; and if the clerk of any superior court shall refuse, neglect or omit, to do any of the duties which he is hereby required to perform, such clerk shall, upon trial and conviction, be deemed guilty of misbehavior in office, and shall forfeit and pay to the appellant, or plaintiff in error, one hundred pounds, to be recovered by action of debt, in any court having cognizance thereof; and be further liable to an action on the case for all damages which such appellant, or plaintiff in error, may sustain, by reason of such refusal, neglect or omission.

All suits, process, &c. com-

83. *And be it further enacted by the authority aforesaid*, That all suits, process, informations, indictments, pre-

sentments, recognizances, bonds, and other matters (suits heretofore instituted for quit-rents excepted) commenced, prosecuted, made or taken, and all penalties, fines, forfeitures, and amerciaments, incurred in the name or the use of the king of Great-Britain, when this territory was under his government, and owed allegiance to him, and not yet paid or satisfied, and all breaches on penal statutes directed to be prosecuted in the name of the said king, shall be prosecuted and proceeded on in the name of the state, in the same manner as if such suits, process, informations, indictments, recognizances, bonds, penal statutes, and other matters, had been commenced, prosecuted, made, taken or directed to be sued in the name of the state; and the governor or commander in chief for the time being, is hereby authorised and required, upon application made to him for that purpose, to assign all sheriffs' bonds, or other bonds taken in the name of the said king, by virtue of any act of assembly heretofore made, to the party or parties injured, to be sued for in his or their own proper name or names; and all breaches in statutes heretofore made in the time of the late government, and directed to be prosecuted in the name of the governor, and all bonds made by virtue of any act of assembly payable to the governor, shall be prosecuted in the name of the present governor, or the commander in chief for the time being; and all breaches on penal statutes directed to be sued in the name of the vestry and church-wardens of the late respective parishes, shall be prosecuted in the name of the justices of the county where such parish was situated; and all penalties on statutes directed to be for the use of the king, or the late lord proprietors, or to be recovered in their, or either of their names, to any other use, shall be to the use of this state; and all penalties directed to be applied to the use of the public, and to the uses of the respective counties, shall be to those uses respectively; and all penalties directed to be applied to the use of the late parishes respectively, shall be applied to the use of the respective counties in which such parishes were situated; and the several superior and county courts hereby established, are hereby authorised and empowered to give judgment, and award execution thereon accordingly; any law, usage or custom, to the contrary, in any wise, notwithstanding.

inenced under the late government, to be in the name of the state; and all bonds, penalties, &c. then to the king, now to the use of the state; & the penalties to church-wardens, to be to the counties.

Fines, &c. paid to any officer, to be accounted for; and all fines hereafter recovered, how paid and accounted for.

a [Fines, forfeitures and amerciaments must be paid by the clerk to the county treasurer, 1801, c. 587.]

Criminals allowed council, and may challenge jurors.

b [And in all state cases may challenge 4 jurors, 1812, c. 833.]

Clerks of the superior courts where to keep their offices, & to give due attendance.

84. *And be it further enacted by the authority aforesaid,* That all fines, amerciaments, forfeitures, and recoveries on penal statutes, heretofore recovered and paid to any officer, shall be accounted for and paid in manner as by this act is directed; and on neglect or refusal, may be sued for and recovered by the persons respectively to whom fines, amerciaments, forfeitures, and recoveries on penal statutes, not heretofore recovered, are by this act payable; and all fines, amerciaments, forfeitures, and recoveries on penal statutes, hereafter to be levied and received, and those in the hands of the late officers, or any of them, shall be paid to the clerks of the respective courts where the same shall be imposed or recovered, and shall by such clerks be accounted for and paid to the person or persons (a) to whom the same shall be payable; and all such fines, amerciaments, forfeitures, and recoveries on penal statutes, as are or shall be directed to be applied to the use of the state, shall by the respective clerks of the courts of law hereby established, be accounted for on oath, and paid to the treasurer once in every year, and the said clerks shall send certified transcripts of all such accounts at the same time to the general assembly, at their sitting next ensuing such payment made; and all such fines, amerciaments, forfeitures, and recoveries on penal statutes, directed to be applied to any other public or county use, and to be received by any other person or persons, shall be accounted for in like manner, and paid to the person or persons to whom the same is or may be payable; and if any clerk shall fail or neglect to account or pay in manner as by this act is directed, or shall conceal any money or monies which are payable as aforesaid, such failure or neglect shall be deemed, upon conviction, a misbehaviour in office, and the clerk so neglecting or failing, shall forever afterwards be incapable of holding any office of trust or profit in this state.

85. *And be it enacted by the authority aforesaid,* That every person accused of any crime or misdemeanor whatsoever, shall be entitled to council in all matters which may be necessary for his defence, as well to facts as to law; and every person on trial for his life, (b) may make a peremptory challenge of thirty-five jurors.

86. *And be it further enacted by the authority aforesaid,* That the clerks of the superior courts shall keep their offices in the respective towns where the said courts are directed to be held; and the clerks of all the several courts of law hereby established shall by themselves, or

their lawful deputies, give due attendance at their respective offices, and all deputies shall take the oath appointed for the qualification of public officers, (a) and an oath of office; and in case of the death of the clerk of any court in the vacation, his deputy shall hold the office of clerk until he or another shall be appointed agreeable to law, and shall be entitled to the fees and perquisites of the office until such appointment; any law, usage, or custom, to the contrary notwithstanding.

a [1791, c. 342, s. 1.]
Deputies.

87. And whereas doubts may arise to whom fees which accrued and became due on suits and proceedings in the late courts, and which at the time of discontinuance of the said courts respectively, or the removal of any officer to whom fees were due, were not finally determined, or which being determined, the fees due thereon have not been levied or received, shall be paid: for ascertaining whereof, and for providing a remedy for all persons to whom any fees or other monies are due, and have heretofore been paid to any officer of any of the late courts in this state: *Be it enacted by the authority aforesaid, That* all fees due to any person or persons, on suits or proceedings in any of the before mentioned late courts in this government, which have not been finally determined, or which being determined, the fees due thereon have not been levied or received, shall be paid to the person or persons to whom the same were payable, his or their executors, administrators or assigns; and the clerks of the several courts of law by this act established, are hereby authorised and required to issue executions for all such fees, and when returned to their respective offices, pay the same to the persons to whom such fees are due and payable.

Fees due on suits in the late courts, how, &c. to whom paid.

88. *And be it enacted by the authority aforesaid, That* all fees and other monies, heretofore paid into the hands of any clerk or sheriff, and not fully accounted for and paid to the person or persons to whom the same were due and payable, his, her or their executors, administrators, or assigns, and all fees which were heretofore due and unpaid, but shall be paid hereafter as aforesaid, shall and may be sued for in any court having cognizance thereof; and if any of the late or present clerks, or other person who may happen to be sued in virtue of this act, be at the time of such suit in the possession of any records, dockets, minutes or other documents, which are suggested to contain proofs of the fees or other monies sued for, and shall upon notice previously given refuse to produce the

All fees paid to clerks, &c. may be sued for, and penalty on clerks refusing to give up dockets, &c.

same, or shall refuse to make oath that such records, dockets, minutes or other documents, contain a full and true account of all fees and other monies by him received in virtue of his office, such defendant shall be deemed guilty of a fraudulent concealment, and the plaintiff shall recover the whole sum for which his suit shall be brought; any law, usage, or custom, to the contrary, in any wise, notwithstanding.

Time not allowed in pleas of limitation, see 1783, c. 187, s. 3.

89. *And be it further enacted by the authority aforesaid,* That the time elapsed between the sixth day of March, one thousand seven hundred and seventy-three, and the nineteenth day of March, one thousand seven hundred and seventy-four, and the time between the tenth day of September, one thousand seven hundred and seventy-five, and the end of this present session of the general assembly, shall not be allowed of in the county courts hereby established in any plea of limitation, or in the computation of time allowed for proving accounts, under the act ascertaining the method of proving book debts.

In all actions, costs to go with the cause. (See 1779, c. 138, s. 2, 4.)

90. *And be it further enacted by the authority aforesaid,* That in all actions whatsoever, the party in whose favour judgment shall be given, or in case of a nonsuit, dismissal, or discontinuance, the defendant shall be entitled to full costs, unless where it is or may be otherwise directed by statute.

Attachments by committees, may be taken cognizance of by the court.

91. *And be it enacted by the authority aforesaid,* That attachments issued against the estates of absconding debtors, or persons suspected of intentions to depart this territory, by any of the late committees, or any of the late or present justices of the peace, by virtue of any resolve or ordinance of congress, or any resolve or act of the general assembly, shall and may be taken cognizance of by the courts hereby established, regard being had to their respective jurisdictions, and shall be proceeded on in the same manner as attachments which may be issued in virtue of this act; any law, usage, or custom, to the contrary notwithstanding.

CHAP. 116.

An act directing the method of electing members of the General Assembly, and other purposes.

1. WHEREAS there is not any law in force for directing the mode to be observed in electing members of the General Assembly;

2. *Be it therefore enacted, &c.* That the annual election (*a*) of members of the general assembly shall be held, at the court-house of the respective counties, (*b*) and that the sheriffs, or other returning officers, shall advertise the day and place of election at the court-house, and other public places within their respective counties, at least twenty days before such election.

General election when held.
a [For the time see 1789, c. 307, and the private acts.]
b [Altered by private acts, and by 1819, c. 1000.]

3. *And be it further enacted,* That the county courts respectively, at the sessions next preceding the day of election in every year, shall appoint two inspectors (*c*) to superintend the election: and if it shall at any time happen that any county court shall fail to make such appointment, or any person so appointed shall refuse to serve, the sheriff, with the advice of three justices of the peace, or if none shall be present, three reputable freeholders, shall before the beginning of such election appoint inspectors for the purpose aforesaid; and every inspector who shall be appointed by either of the ways aforesaid, and serving pursuant to such appointment, shall be held and deemed eligible at such election.

Inspectors of the poll to be appointed.

c [Who must be sworn, 1812, c. 842.]

4. *And be it further enacted,* That the sheriffs, or the returning officers, shall on the day, and at the place for holding each respective election, be provided with small boxes, one for receiving the ballots for the senator, and the other receiving the ballots for members of the house of commons, and where there is a town having a right of representation, a third box for receiving the ballots for such town member; and the returning officer, or his deputy, shall receive the tickets in presence of the inspectors, (who are to be appointed as hereafter directed) and put each ticket into its proper box; and all the boxes shall be locked, or otherwise well secured, until the election shall be finished; and the returning officer shall keep the election open two days, and no longer; and the returning officer shall at sunset of the first day, and in presence of the inspectors, put his seal on the place to be made for the reception of the tickets, which shall continue until the election shall be renewed the succeeding day, and shall then be taken off in presence of the inspectors.

Manner of taking the poll.

5. *And be it declared and enacted,* That every person qualified to vote in manner directed by the form of government, who shall attend for that purpose at any election, shall give to the returning officer, in presence of the inspectors, a ticket or scroll of paper, rolled up, in which shall be written the name or names of the person or persons for whom he intends to vote, which ticket shall be

Manner of electors giving their votes, and sheriffs declaring the members duly elected.

put into its proper box, in manner before directed ; and at the same time the returning officer, and each of the inspectors, shall take down, in separate lists, the name of every person voting, distinguishing those who shall vote for senators in one list, those for county members in the house of commons in a second, and where there shall be a town election, those who vote for a town member in a third ; and when the election shall be finished, the returning officer and the inspectors shall, in presence of such of the electors as may choose to attend, open the boxes one after another, and number the ballots of one box before they shall open another, at the same time reading aloud the names of the persons who shall appear in each ticket ; and if there shall be two tickets rolled up together, or if any ticket shall contain the names of more persons than such elector has a right to vote for, in either of these cases, such ticket shall not be numbered in taking the ballots, but shall be adjudged void ; and when each class of tickets shall be numbered, the persons having the greatest number of ballots shall be declared duly elected ; but where two persons shall have an equal number of votes, the returning officer shall have the casting vote, but shall not vote in any other case whatsoever.

Proviso for
Mecklenburg
elections.

6. *Provided nevertheless*, That it shall and may be lawful for the sheriff, or other returning officer of Mecklenburg county, and he is hereby authorised and required, to direct his lawful deputy to open an election at the house commonly called *The Cold-Water Meeting-House*, and there, on the first day of any election, to receive the ballots of the persons entitled to vote in the said county, living on the east side of Coddle creek and Rocky river, from the mouth of the said creek, under the rules and regulations herein before and afterwards directed ; and the ballots so taken shall be sealed up by the deputy, and transmitted to the returning officer of Mecklenburg county on the second day of each election, on or before one of the clock in the afternoon ; and such ballots so taken shall, and are hereby declared to be part of the election for the said county, any thing herein contained to the contrary notwithstanding.

Electors to be
sworn.

7. *And be it further enacted*, That every person, before he shall be admitted to give his vote at any election, shall, if required, swear (or affirm, if a quaker) that he is qualified to the constitution, and that he hath not voted before at such election.

8. *And be it enacted*, That every election hereafter to be made by virtue of any writ from either house of the general assembly, shall be conducted and regulated in the same manner as annual elections, so far as the particular case can be applied to the general rules.

Writs of election from the assembly, made in the manner of annual elections.

9. *And it is hereby enacted*, That every election hereafter to be made in this state, shall begin at twelve of the clock at noon, on the day appointed for such election.

Elections, when to begin.

10. *And be it further enacted*, That if any person shall hereafter vote at any election, who by law shall not be entitled to vote at such election, he shall forfeit and pay the sum of five (a) pounds lawful money of this state; to be recovered with costs, by action of debt, in any court of record having cognizance thereof, one half to the justices of the county wherein such election shall be had, to be applied towards lessening the county tax, and the other half to him or them who shall sue for the same; and where any suit shall be brought against any person for voting as aforesaid, without having a right to such vote, the *onus probandi* shall lie upon the defendant.

Penalty on persons voting who are not qualified.
a [2l. by the scale.]

11. *And be it enacted*, That if any person shall at any time before or after any election, either directly or indirectly, give any money, gift, gratuity, or reward, to any elector or electors, or to any county or town, in order to be elected, or to procure any other person to be elected as a member of the General Assembly, every person so offending shall forfeit and pay five hundred pounds, lawful money of this state; to be recovered by action of debt, in any court of record having cognizance thereof, with costs, and shall be incapacitated to serve as a member during the continuance of that General Assembly, for which such election shall be made as aforesaid.

Penalty on candidates giving rewards, &c.

12. *And be it further enacted*, That every person elected as a member of the general assembly shall, before he shall take his seat therein, take the oath of allegiance appointed to be taken for the qualification of members of the general assembly and public officers. (a)

Members of Assembly to be sworn.
a [1791, c. 342, s. 1.]

13. *And it is further enacted*, That if at any time it shall happen that there shall be no sheriff in any county qualified according to law, the coroner or coroners in such county is, and are hereby empowered to hold the election for such county; and such sheriff or coroner, within ten days after every election, shall, at the request of any person elected to serve in the general assembly, or other person in his behalf, cause fair copies of the lists of votes,

Where no sheriff, coroner to take the poll, & give copies when demanded.

(If neither sheriff nor coroner three justices may appoint a

freeholder,
1781, c. 170, s.
10.)

and the number of ticket ballots for each candidate, to be made out and delivered to the person requesting the same, or to his order, which lists and numbers shall be signed by the returning officer; and if any officer shall refuse so to do, or to make elections in any other manner than by this act is directed, or shall neglect or refuse to make returns of the elections by him to be made or taken, the officer so offending shall forfeit and pay five hundred pounds, lawful money of this state; to be recovered by action of debt, in any court of record having cognizance thereof, with costs, one half to the governor for the time being, for the use of the state, and the other half to such person as shall sue for the same.

CHAP. 117

An act for making provision for the poor, and for other purposes.

Overseer of
the poor to be
elected in each
county.

Manner of elec-
tion.

a [County
court may order
an election if a
new one be
deemed neces-
sary, 1795, c.
390.)

b [Shall be styl-
ed wardens of
the poor, 1783,
c. 191, s. 3.]

Sheriff to ad-
vertise the day
of election.

1. *Be it enacted, &c.* That the freemen in each and every county in the state shall meet on Easter Monday (a) next after the passing of this act, at the court-house, or place where the county court is commonly held, and on the same day, and at the same place, in every three years thereafter, then and there to elect seven freeholders to serve as overseers of the poor; and the sheriff, or his deputy, is hereby directed to set up an advertisement at the place of election in each county, appointing a day for the meeting of the overseers so elected, which day shall not be less than ten, and not more than thirty days after the election; and the said sheriff, or his deputy, shall also summon each and every overseer to meet on the day so appointed at the court-house, or usual place of holding court in each respective county, to be qualified according to the directions of this act; and if the sheriff shall fail to appoint and advertise a day of meeting as aforesaid, or shall fail to summon each and every overseer (b) in his county to attend on such day, such sheriff shall forfeit and pay the sum of ten pounds for the default first mentioned, and the sum of five pounds for every overseer not summoned as aforesaid, to be levied and applied as herein after directed; and the sheriff shall be paid by the county the sum of two shillings and eight pence for every overseer he shall summon.

2. *And be it enacted,* That the sheriff in each respective county shall advertise at the court-house, and other

public places, the day of holding the election of overseers of the poor, at least ten days before such election, under the penalty of ten pounds for neglect; and the elections of such overseers shall be held and conducted in the same manner, and under the same regulations, as elections of members of the house of commons.

3. *And be it further enacted*, That the overseers of the poor so elected, shall at the first meeting next after such election, take before some magistrate the oath by law appointed to be taken by public officers, (a) and shall repeat and subscribe the following oath in a book to be by them kept for that purpose, *to wit*,

Overseers to take the oaths.

a [For the oath see 1791, c. 342, s. 1.]

I, A. B. do swear, that I will honestly and faithfully discharge my office as overseer of the poor, to the best of my skill and ability, according to law.

And every overseer so elected and qualified, shall be deemed and taken to be an overseer of the poor in the county for which he was elected for three years.

4. *And be it further enacted*, That every person elected an overseer of the poor according to this act, who shall refuse or neglect to qualify as aforesaid, shall forfeit and pay five pounds, (b) to be recovered by the wardens before any magistrate, and applied to the use of the poor; and the other persons chosen and qualified as aforesaid, shall elect one or more freeholder or freeholders, instead of him or them so refusing or neglecting; and such person or persons so chosen shall, after being qualified in manner aforesaid, be held to be a legal overseer of the poor to all intents and purposes.

Penalty for neglecting, &c. to qualify.

b [10l. to be sued for by the county trustee and applied to the use of the county, 1783, c. 191, s. 2.]

5. *And be it further enacted*, That the overseers (c) in each respective county, or a majority of them, shall at their first meeting elect two of their members to execute the office of county wardens for one year; and if the persons so elected shall refuse to execute the office of county wardens, he or they shall forfeit and pay the sum of twenty pounds, to be recovered and applied as herein after directed; and in such case, and also in case of the death of any county warden, or expiration of the term of appointment, or removal out of the county, the said overseers may proceed to elect another warden, in the same manner as in the first instance. *Provided*, That no person shall be obliged to serve as county warden more than one year in three succeeding years. *Provided also*, That

Wardens to be elected, and penalty for refusing to serve.

c [All are wardens, 1783, c. 191, s. 3.]

Persons excepted.

no member of the council of state, or member of the general assembly, shall be compelled to serve in the office of county warden, any thing herein contained to the contrary notwithstanding.

Books to be kept for the proceedings of the overseers.

6. *And be it further enacted*, That the county wardens of every county shall purchase, at the expense of the same, well bound books, for keeping a journal and minute of the proceedings of the overseers of the poor, in which shall be fairly stated accounts of all such money as they from time to time shall receive in virtue of their office, and all disbursements made by them on account of the county; and the county wardens in every county shall, upon the expiration of their wardenship, order and direct the clerk of the overseers of the poor in their county to make a fair copy of such accounts, and set up the same in the court-house of the county on some day of the court next after the expiration of their wardenship, there to continue for inspection during the sitting of the court; and the county wardens and clerks who shall fail or neglect so to do, shall forfeit the sum of ten pounds, to be recovered by action of debt or information, in any inferior court of pleas and quarter sessions, by any person suing for the same.

Meeting of the overseers to be called.

7. *And be it further enacted*, That the county wardens, or either of them, or if they shall refuse or neglect, any three of the overseers of the poor in each county, shall have power to call a meeting or court of overseers when necessary, by summons under his or their hand or hands, directed to the sheriff or constables of the county, who are hereby directed to execute the same, under the penalty of forty shillings for every overseer in such summons named whom he or they shall fail to summon; and every overseer so summoned, and refusing or neglecting to attend, shall forfeit and pay the sum of forty shillings, unless such sheriff, constables or overseer, shall shew sufficient cause for the omission to the next succeeding meeting or court of overseers, which penalties shall be recovered and applied as herein after directed.

Former orders of vestry confirmed.

8. *And be it further enacted*, That every agreement and order by the vestry of any parish heretofore entered into or made, for making provision for a minister to serve the cure of the parish, for supporting the poor or defraying the contingent charges thereof, shall be, and is hereby declared good and available against the overseers of the poor in the county wherein such parish shall be. *Pro-*

vided, That no minister shall be authorised by any thing herein contained, to claim salary for services performed since the eighteenth day of December, one thousand seven hundred and seventy-six.

9. *And be it enacted*, That when any overseer of the poor shall die or remove out of the county for which he was elected, the remaining overseers of the poor, or a majority of them, shall elect another in his stead; and the person so elected, being duly qualified, shall have the same authority as other overseers of the poor.

Number of overseers kept up.

10. *And be it further enacted*, That the meeting or court of overseers in every county in this state shall hereafter be held at the court-house, or usual place of holding the court of the county; and that the said overseers, or a majority of them, in each county, at their first meeting respectively, shall appoint some person of skill and probity to officiate as clerk, but such person shall not be one of their own body.

Overseers where to meet and appoint a clerk.

11. And for payment of any arrears now due in any parish in this state to ministers or others, for services heretofore performed; *Be it enacted by the authority aforesaid*, That the said overseers, or a majority of them, in each county respectively, shall and may, at their first meeting, or within thirty days after, lay a tax, (a) not exceeding one shilling for every hundred pounds value of all taxable property, agreeable to the act for levying a tax by general assessment, within such a parish, and a poll-tax, not exceeding one shilling, on all persons within such parish not having estates of the value of one hundred pounds, for the purpose of paying the arrears aforesaid; and if the said overseers of the poor in any county, shall refuse or neglect to lay a sufficient tax as aforesaid, for the purposes above mentioned, such overseers so neglecting or refusing shall be liable to the action of the party or parties aggrieved, his, her or their executors or administrators, for all damages which he, she or they shall or may sustain thereby.

Arrears to be paid.

a [The county court is to lay a tax on the application of the wardens; but a majority of the justices must be present, 1817, c. 945.]

12. *And be it further enacted*, That the overseers (b) of the poor, or a majority of them, in their respective counties, shall have the same powers and authorities as vestries heretofore had in their parishes in every respect, the power of inducting ministers, and of laying or applying any future tax for religious purposes, only excepted.

Overseers powers.

b [They must publish annually the application of the monies they receive, 1786, c. 255, s. 3—1792, c. 361.]

Penalties how recovered.

13. *And be it further enacted,* That the several forfeitures and penalties by this act inflicted, for which no method of recovery or application is herein before directed, shall and may be recovered with costs, before any jurisdiction having cognizance thereof; one half to the use of the informer, the other half to the county warden, for the use of the poor of the county wherein such penalties shall be incurred.

Sheriffs to advertise the day of election.

14. *And be it enacted,* That the sheriff in each county shall advertise the election of overseers of the poor at least ten days before such election, at the court-house, and other public places; and every sheriff failing so to do, shall forfeit and pay twenty pounds; to be recovered with costs, in any court having cognizance thereof, by action of debt, one half to the county wardens, for the use of the poor of the county, the other half to the person or persons who shall sue for the same.

If prevented by bad weather, another time appointed.

15. *And be it enacted,* That if it shall happen, from badness of weather, or any other unavoidable hindrance, that an election of overseers of the poor in any county shall not be held on the day by this act appointed for that purpose, that in such case the sheriff shall appoint a time, not less than ten, nor exceeding twenty days thereafter, for electing overseers of the poor in such county, and shall summon the inhabitants having a right to vote for members of the house of commons to attend, and elect in manner herein before directed; and every such election shall be as good and valid, as if the same had been made on the day by this act directed.

Legal settlement.

16. And for determining all disputes concerning what shall be accounted a legal settlement, whereby any person may be entitled to be provided for at the parish charge; *It is hereby enacted and declared,* That no person shall be accounted an inhabitant, so as to have gained a legal settlement in any parish, until such person shall have been actually resident in such county one whole year.

Proceedings where poor persons come into any county.

17. *And be it further enacted,* That upon complaint made by the county wardens of any county, before a justice of the peace, that any poor person or persons are come into their county, and likely to become chargeable thereto, it shall be lawful for such justice, by warrant under his hand, to cause such poor persons to be removed to the county where he or she was legally last settled; but if such poor person be sick or disabled, and cannot be removed without danger of life, the county wardens shall

provide for his or her maintenance and cure at the charge of the parish, and after recovery, shall cause him or her to be so removed ; and the county wherein he or she was last legally settled shall repay all charges occasioned by the sickness, maintenance, and cure, of such poor person, and also all charges and expenses, if such person shall die before removal ; and if the county wardens of the county to which such poor person belongs, shall refuse to receive and provide for the person or persons removed by warrant as aforesaid, every county warden so refusing shall forfeit and pay twenty pounds, one half to the use of the county from whence the removal was, and the other half to the informer ; to be recovered by action of debt or information, in the county court where the information was made, with costs of suit ; and if the wardens of the county where such poor person was legally settled shall refuse to pay and satisfy all the charges and expenses aforesaid, in such case the wardens of the county refusing shall be liable for the same, to be recovered with costs, in the county court as aforesaid ; and if any housekeeper shall entertain such poor person, and shall not give notice thereof to the county wardens of the county, or one of them, within one month, he or she so offending shall forfeit and pay the sum of five pounds ; to be recovered with costs, by the county wardens, for the use of the county, by action of debt or information, in any county court. (a)

a [See further as to the powers and duties of wardens, 1779, c. 152—1793, c. 390—1798, c. 497, s. 3.]

CHAP. 118.

An act for appointing sheriffs, (b) and directing their duty in office, and for obliging the late sheriffs and collectors of public monies who are in arrear, to account for and pay the same, and other purposes.

b [For their appointment see 1779, c. 156, s. 1.]

1. *And be it enacted*, 'That no sheriff shall be compellable to serve more than one year, and until the next succeeding term of his county court, after expiration thereof ; and every person accepting the office of sheriff shall, before his executing the same, in his county court take the oath appointed for the qualification of public officers, (c) and also the following oath, *to wit*,

Sheriff not compelled to serve more than one year, and till the next county court.

c (For the oath see 1791, c. 342, s. 1.)

I A. B. do solemnly swear, that I will execute the office of sheriff of _____ county to the best of my knowledge and ability, agreeable to law ; and that I will not

His oath.

take, accept or receive, directly or indirectly, any fee, gift, bribe, gratuity, or reward whatsoever, for returning any man to serve as a juror, or for making any false return on any process to me directed. And I also swear, that I have not given any fee, gift, gratuity, or reward, or other thing whatsoever, to any person or persons for his or their vote or interest to procure me to be nominated to the said office; nor will I hereafter give to any person or persons such fee, gift, gratuity or reward, for having procured, or contributed to procure me to be nominated thereto. *So help me God.*

To give bond.
a (Also bonds to collect the public, county and poor taxes, 1784, c. 219, s. 6—1798, c.

509.

The condition.

And such sheriff shall also enter into bond, (a) before the justices of his county court, with two or more good and sufficient securities, in the penalty of five thousand pounds, payable to the governor and his successors, with condition in form following, *that is to say,*

The condition of the above obligation is such, that whereas the above bounden _____ is constituted and appointed sheriff of _____ county, by a commission from the governor, under the seal of the state, dated the _____ day of _____ last past; if therefore the said _____ shall well and truly execute and due return make of process and precepts to him directed, and pay and satisfy all fees and sums of money by him received or levied by virtue of any process into the proper office, by which the same by the tenor thereof ought to be paid, or to the person or persons to whom the same shall be due, his, her, or their executors, administrators, attorneys or agents, and in all other things well, truly and faithfully, execute the said office of sheriff, during his continuance therein, then the above obligation to be void, otherwise to remain in full force and effect.

Court to take bond, which on breach of the condition may be sued.

b (If no bond is taken the justices are liable, 1809, c. 777—1790, c. 327.)

Which said bond every county court is hereby required and empowered to demand and take, and cause to be acknowledged before them in open court, and recorded; (a) and upon a breach of the condition of such bond, the same shall be assigned by the governor to the party or parties injured, who may maintain an action thereon, in his or their name; and no such bond shall become void upon the first recovery, or if judgment shall be given for the defendant, but may be put in suit and prosecuted from time to time, until the whole penalty shall be recovered.

2. *And be it further enacted.* That every sheriff who shall be in office on the first day of January next, shall at the first court to be held for his county thereafter, enter into bond with security, as is directed for persons accepting the office of sheriff; and if any person who shall hereafter be appointed sheriff by virtue of this act, shall refuse to accept and execute the office of sheriff, he shall forfeit and pay the sum of fifty pounds lawful money of this state, to the use of the public; to be recovered in the name of the governor, by action of debt, in any court having cognizance thereof. *Provided always,* That if any person who shall hereafter be nominated or appointed to execute the office of sheriff of any county in this state, shall be willing to execute the same, but cannot give security as by this act is required, and shall make oath in the county court that he hath used his best endeavors, without fraud or collusion, to get such securities, that then such person shall not incur the penalty aforesaid, any thing herein contained to the contrary notwithstanding.

4. *Provided further, and be it enacted,* That no member of the general assembly, or council of state, shall be nominated (a) or commissioned, nor shall any practising attorney be obliged to act as sheriff of any county within this state.

5. *And be it further enacted,* That every sheriff, by himself, or his lawful officers or deputies, shall from time to time execute all writs and other process to him legally issued and directed within his county, or upon any bay, river or creek, adjoining thereto, and make due return thereof, under the penalty of forfeiting fifty pounds lawful money of this state for each neglect where such process shall be delivered to him twenty days before the sitting of the court to which the same is returnable, to be paid to the party grieved by order of such court, upon motion and proof of such delivery, unless such sheriff can shew sufficient cause to the court at the next succeeding court after such order; and for every false return the sheriff shall forfeit and pay fifty pounds, one moiety thereof to the party grieved, and the other moiety to him or them that will sue for the same; to be recovered with costs, by action of debt, bill, or plaint, in any court of record, and moreover be further liable to the action of the party grieved for damages; and no sheriff shall return upon any writ that the defendant is not to be found

Sheriff in office on the 1st of January next to give bond.

Proviso where they cannot get security.

Persons exempt from serving as sheriff.

Penalty on sheriff neglecting to execute process, or making false returns.

a (A sheriff cannot be re-elected unless he has settled in full with the treasurer, county trustee and wardens of the poor, 1806, c. 699, s. 2.)

Directions as to the return of non est inventus.

within his bailiwick, unless such sheriff shall have actually been at the house or place of abode of such defendant; and where any defendant shall be a known inhabitant of any other county than that of the sheriff to whom such process shall be directed, the sheriff shall return the truth of the case, and thereupon an *alias* shall issue, directed to the sheriff where such defendant resides, if the original process shall issue from a superior court, and variance of the addition of the place of abode of the defendant shall not be deemed error or matter of abatement: And in case at any time there shall be no person properly qualified to act as sheriff in any county in this state, that then it shall and may be lawful for the coroner (a) of such county, and he is hereby required to execute all process within the same, until some person shall be appointed, and properly qualified to act as sheriff in said county; and such coroner shall be under the same rules and regulations, and subject to the same fines and forfeitures, as sheriffs are by law, in relation to the executing and returning of any process to them directed.

Coroner to act where no sheriff.

a [If there is neither sheriff nor coroner, the process may be directed to another sheriff of the same district, 1779, c. 156, s. 3.]

Exemptions from the service of process in particular cases.

6. *Provided always*, That it shall not be lawful for any sheriff, or other officer to execute any writ or other process upon a Sunday, or upon any person attending his duty at a muster of the militia, or any election of burgess or burgesses, or overseers of the poor, or county wardens, or any person summoned to attend as an evidence or a juror; and all such services of process is hereby declared illegal and void, unless the same be issued against any person or persons for treason, felony, riot, rescous, breach of the peace, or upon an escape out of prison or custody, and such process shall and may be executed at any time or place.

Sheriff's duty on serving executions.

b (For sheriff's fees, see 1784, c. 223, s. 3.)

7. *And be it further enacted*, That from and after the first court which shall happen after the first day of January next, each and every sheriff within this state shall, on levying any execution for any debt, damages or costs, make out, if required, a bill of his fees (b) due on such action or suit, and set down under the said bill a true copy of the clerk's, attorney's, and other endorsed fees, separately and distinctly, and give a receipt for the same to the party against whom such execution shall issue, and also shall endorse the amount of his own fees he shall so take on such execution, to be entered by the clerk on the execution docket, for which copy the said sheriff may demand and receive one shilling of the person request-

ing the same; and if any sheriff, or other officer, empowered to levy any execution, shall fail so to do, such sheriff or other officer shall forfeit and pay fifty pounds to any person who will sue for the same.

Penalty for not performing it.

8. *And be it enacted*, That it shall not be lawful for any sheriff, or his officer or deputy, to take any obligation of or from any person or persons in his custody, for or concerning any matter or thing relating to his office, otherwise payable than to himself as sheriff, and dischargeable upon the prisoner's appearance, and rendering himself at the day and place required in the writ, whereupon he was or shall be taken or arrested, and his securities discharging themselves therefrom as special bail of such prisoner, or such person or persons keeping within the limits and rules of any prison; and every other obligation taken by any sheriff in other manner or form, by colour of his office, shall be null and void, except in any special case any other obligation is or shall be by law particularly and expressly directed: And that no sheriff shall demand, exact, take or receive, any greater fee or reward, whatsoever, nor shall have any allowance, reward or satisfaction, from the public, for any service by him done, other than such sum as the county court shall allow, for *ex officio* services, and the allowances given and provided, or which shall be from time to time given and provided by law.

To take no other bonds than bail bonds payable to themselves, dischargeable on prisoner's appearance, &c.

To take no more than legal fees.

9. *And be it further enacted*, That if any person committed, rendered, or charged in execution, or upon mesne process, to any prison, shall thence escape, it shall and may be lawful to and for any justice of the peace of the county where such prisoner was in custody, upon oath of such escape made before him by the sheriff, under-sheriff or gaoler, or other credible person, to grant to any person demanding the same, one or more warrant or warrants, under his hand and seal, directed to all sheriffs, bailiffs and constables within this state, reciting the cause of such person's commitment, and the time of his or their escape, and commanding them, and every of them, in their respective counties and precincts, to seize and retake such prisoner so escaped, or going at large, and being so taken, forthwith to convey to the prison where debtors are usually kept in the county where such retaking shall be, there to be kept in safe custody until he or she be thence discharged by due course of law; which warrant the sheriff is required to obey, and receive the

Proceedings in cases of prisoners escaping.

prisoner into his safe custody, and to give a note to the person or persons delivering him, her, or them, certifying his receipt of such prisoner, and shall also make return of the execution of such warrant to the court of the county where such prisoner escaped; and if he or she was there in custody charged in execution, then the said sheriff shall safely keep him or them without bail or mainprize, until he or she shall have made full payment and satisfaction to the plaintiff or plaintiffs, creditor or creditors, in whose name such execution was issued out, or until the judgment or judgments obtained against him or her shall be reversed or discharged by due course of law; And if any such prisoner shall have been in custody upon mesne process in any action of debt, or upon the case, the sheriff to whom he or she shall be so committed, shall, in like manner, keep such prisoner in his safe custody, and make return of the execution of the warrant by which he or she was re-taken to the court of the county wherein he or she was first arrested; and thereupon it shall be lawful for the said court, upon the plaintiff's filing his declaration and entering the defendant's appearance, to proceed to give judgment thereon, in the same manner as if the defendant had appeared in court and refused to plead, unless such defendant shall cause special bail to be entered in said court, and shall immediately plead to issue; and thereupon a certificate under the hand of the clerk of the said court, that such bail is given and delivered to the sheriff in whose custody such defendant shall then be, it shall be lawful for him to set at large such prisoner, and not otherwise; but where any prisoner escaped, and re-taken upon such warrant as aforesaid, shall thereafter be charged with treason, felony, or other capital crime, in behalf of this state, for which he or she ought to be tried in one of the superior courts, and shall be for such cause removed to any gaol of such court, every such prisoner shall be charged in such gaol with all the causes wherewith he or she stood charged in the gaol from whence he or she escaped, or was removed, until he or she be thence delivered by due course of law; any law, usage or custom to the contrary notwithstanding:

Remedy against
sheriffs, &c. fail-
ing to pay mo-
nies by them re-
ceived in virtue

10. And be it further enacted, That if any sheriff or other officer hath made, or shall make any return upon any writ of *fiery facias* or *venditioni exponas*, that he hath levied the debt, damages and costs, or fees, as in such

writ required, or any part thereof, and hath not or shall not pay the same into the proper office, or to the party to whom the same is payable, or his attorney, at the return of such writ, or hath or shall return upon any writ of *capias ad satisfaciendum*, or attachment, for not performing a decree in chancery for the payment of any sum of money or other matter, that he hath taken the body or bodies of any defendant or defendants, and hath the same ready to satisfy the money or other matter in such writ mentioned, and shall have actually received the money or other matter from the defendant or defendants, or any part thereof, or suffered him, her or them, to escape with consent of such sheriff or officer, and hath not or shall not pay the same into the proper office, or to the party to whom the same is payable, or his attorney, that then and in either of the said cases, it shall and may be lawful for the creditor, at whose suit of *feri facias*, *renditioni exponas*, *capias ad satisfaciendum*, or attachment, hath or shall issue, upon motion made in the court from whence such writ issued, or in the superior court of the district wherein such sheriff shall reside, to demand judgment against such sheriff or other officer, for the money or other matter mentioned in such writ, and such court is hereby authorised and required to give judgment accordingly for the same, with costs, and to award execution against the goods and chattels, lands and tenements, of such sheriff, provided such sheriff have ten days previous notice of such motion; and where it shall so happen that the time of any person's sheriffalty shall be expired, or he shall be removed from his office before such motion made by the creditor or creditors, the same remedy, proceedings, and relief, shall and may be had against him, as if such person was actually in office; any thing herein contained to the contrary notwithstanding.

of any precept to them directed, or suffering escapes.

11. *And be it further enacted*, That where any sheriff shall take the body of any debtor in execution, and shall wilfully or negligently suffer such debtor to escape, and such sheriff, or person suing out such execution, shall die before a recovery can be had against such sheriff for such escape, the person suing out such execution, his executors or administrators, shall and may have and maintain an action of debt against such sheriff, his executors or administrators, for the recovery of all such sums of money as are mentioned in the said execution and damages for

Method of recovery in cases of escape, where the plaintiff or sheriff dies.

detaining the same; any law, usage or custom to the contrary notwithstanding.

Method of turning over prisoners.

12. And for removing all controversies touching the manner of turning over prisoners upon the sheriff's quitting his office; *Be it further enacted by the authority aforesaid*, That the delivery of prisoners by indenture between the old sheriff and the new, or the entering upon record in court, the names of the several prisoners, and the causes of their commitment, delivered over to the new sheriff, shall be sufficient to discharge the late sheriff from all suits and actions for any escape that shall happen.

Registers appointed.

a (See 1791, c. 342, s. 1—1816, c. 901.)

b (If no bond is taken the justices on the bench are liable, 1809, c. 777—1790, c. 327.)

c (The bond must be renewed every three years, 1793, c. 384, s. 4—1819, c. 990.)

13. *And be it enacted*, That the justices of the respective counties in this state shall nominate and appoint registers in the same manner as is herein before directed for the choice of sheriffs; and the registers so appointed shall hold their respective offices during their good behaviour; but each register, before entering upon the execution of his office, shall take the oath appointed for the qualification of public officers, (*a*) and an oath of office; and shall give bond, (*b*) in the penalty of five thousand pounds, payable to the governor for the time being, and his successors, for the true and faithful discharge of his office; which bond, (*c*) upon a breach thereof, shall be assigned to the party or parties injured, and may be put in suit from time to time until the whole penalty shall be recovered.

Coroners appointed.

d [See 1816, c. 901.)

14. *And be it further enacted*, That every county court in this state shall, and they are hereby empowered, to appoint two or more coroners (*d*) within their county, if they shall be of opinion that more than one will be necessary.

Governor to appoint notaries.

e (For want of a notary a protest may be made before a justice, 1812, c. 844.)

f (See 1791, c. 342, s. 1.)

15. *And be it further enacted and declared*, That the governor for the time being shall, from time to time, as any vacancy may happen, appoint one or more persons, properly qualified, to act as notary or notaries (*e*) at different ports in this state; and the said notaries, and every of them, shall take the oath appointed to be taken for the qualification of public officers, (*f*) and also an oath of office; which oath may be taken in, and administered by the court of the county in which such notary shall reside.

CHAP. 119.

An Act to prevent abuses in taking up stray horses, cattle, hogs and sheep, and other things therein mentioned.

1. WHEREAS it becomes difficult to recover stray horses, cattle, sheep and hogs, for want of some legal provision to effect the same;

2. *Be it therefore enacted, &c.* That the respective courts (a) in each county within this state shall appoint a ranger (b) for their respective counties, who shall hold his office during good behaviour; and that every freeholder who shall take up any stray horse, mare, gelding or colt, neat cattle, hog or sheep, shall within ten days after the taking up of such stray (the owner of such stray or strays being to him unknown) make information on oath before the ranger of the county wherein such stray or strays shall be so taken up, of the marks, brands and colour of each and every such stray or strays, and that the same was taken up at his or her plantation or place of abode, and that the marks or brands have not been altered or defaced, by means of, or the knowledge of such taker-up, (c) whereupon such ranger is hereby required to issue his summons to any two freeholders of the neighbourhood, who after taking the following oath; *to-wit*, (d)

Rangers appointed, & proceedings with strays.

a [There must be present 7 justices, & the person elected must have a majority of those present, 1816, c. 901, s. 2.]

b [One or more may be appointed, 1803, c. 640.]

c [If the stray is more than 40s. value, he must give bond, pay 2s. for writing it, and pay \$1 for advertising, 1799, c. 542—

1815, c. 892— and a fee of 50c. to the ranger, 1816, c. 909.]

d [See 1819, c. 1002.]

You shall swear that you will well and truly view and appraise the stray or strays (as the case may be) in the summons to you directed, without favour or partiality, according to your skill and ability. So help you God.

before the ranger (who is hereby authorised to administer the same) or some justice of the peace for the county where such stray or strays shall be so taken up, shall view and appraise such stray or strays, and make return thereof to the said ranger, under their hands and seals: which appraisement, with a particular and exact description of the marks, brands, age and colour, as near as can be ascertained, of each and every such stray or strays, together with the time of taking up, and place of abode of the person taking up the same, shall by such ranger be entered in a book to be by him kept for that purpose, and shall during the sitting of the next succeeding court in the county where such entry shall be made, put up an advertisement (e) in the most public place, describing therein the kind, marks, brands, and colour of all strays

e [Two weeks in the state, per 1815, c. 892.]

entered as aforesaid; and the ranger shall have and receive from the person taking up such stray or strays, for the sum of five (a) shillings for every such entry to be by him made; and the person taking up such stray or strays, for his trouble and expense in taking up the same, and paying as aforesaid, may demand and receive of the person claiming the property of the said stray or strays, the sum of five shillings for each horse, two shillings and six pence for each head of cattle, and one shilling per head for every hog or sheep.

3. *And be it further enacted*, That the property of every stray horse, mare, gelding or colt, neat cattle, hog, or sheep, twelve months after such appraisement, and no property proved by the owner thereof, shall be deemed to be vested in the person taking up the same.

4. *Provided nevertheless*, That it shall and may be lawful for the former owner of any such stray or strays, at any time within twelve months after such appraisement, as aforesaid, on proving his property to the same, by his own oath or otherwise, to demand and recover such stray or strays, or the valuation thereof, the claimant first paying the ranger's fee, and the reward for taking up the same.

5. *Provided also*, That where the taker up of any stray shall have been at any expense for keeping and maintaining such stray, it shall be lawful for him to retain the same until the owner or claimer thereof shall pay all such expense; which expense shall be ascertained in the following manner, *to wit*, The taker up shall obtain from some justice of the peace a warrant, empowering three freeholders, by the said justice to be named, to declare on oath, upon view of the said stray, and examination of witnesses, if necessary, how much the said taker up ought to demand for the keeping and maintenance of the stray; and such sum as shall by the said freeholders, or any two of them, be so declared, shall be the sum which the taker up is and shall be entitled to demand and receive, before the owner or claimer can take the stray out of his possession.

6. *And be it further enacted*, That after the expiration of twelve months, each and every person so taking up any stray or strays, and no property proved by the owner thereof, shall account for and pay into the hands of the county treasurer, (b) two-thirds of the appraised value of all such stray or strays, after deducting the ranger's fee, and the reward for taking up the same: and in

a [One dollar & fifty cents, 1813, c. 892, & 1816, c. 909.]

Property of strays in the taker up.

Proviso, for the owner to recover.

Stray retained till expense of keeping paid.

If no property proved in 12 months, 2-3 of the value to be paid the county treasurer.

b [County trustee, 1795, c. 441.]

case any person so taking up any stray or strays, according to the intent and meaning of this act, shall neglect or refuse to account with the said treasurer, as in this act before directed, he or she so failing shall forfeit and pay double the appraised value of all such stray or strays by him or her so taken up, to be recovered by action of debt, before any jurisdiction having cognizance thereof, one half to the person suing for the same, and the other half to the use of the county wherein such stray or strays may be taken up; which said treasurer is hereby authorised and required to receive and account for the same, in the same manner, and under the same regulations and restrictions, as other county monies; which said money shall be applied to the use of the county, where such stray or strays shall be so taken up.

7. *Provided nevertheless*, That it shall and may be lawful for the former owner thereof, at any time, on proving his property by the oath of one or more indifferent witnesses, to demand and receive, from the county treasurer, two-thirds of the appraised value of all such stray or strays, so accounted for as aforesaid, deducting therefrom the ranger's fee, the reward for taking up, and the treasurer's commissions of two and a half per cent. for receiving and accounting for the same.

Owner may receive 2-3 of the value.

8. *Provided always*, That if after the appraisement of any stray horse, mare, gelding or colt, and entry thereof made with the ranger as aforesaid, such stray should happen to die within the space of six months (a) after such appraisement, the person taking up such stray or strays shall not be answerable for the same, unless such death appears to have been occasioned by ill usage or abuse.

Taker up not answerable for the death of strays.
a (If within 12 months, shall not be answerable unless occasioned by ill usage, 1817, c. 951.)

9. *And be it further enacted*, That if any person, not being a freeholder, shall presume to take up any stray horse, mare, gelding or colt, neat cattle, hog or sheep, or if any freeholder shall take any such stray or strays at any other place than on his own land, or shall make use of any such stray or strays before the same shall be appraised as aforesaid, he or she so offending, shall for every such offence forfeit and pay the sum of five pounds, to the use of the informer; to be recovered with costs before any jurisdiction having cognizance thereof, and be further liable to the action of the party grieved. *Provided nevertheless*, That nothing herein contained shall extend to prevent any person from taking up any stray or strays

Who may take up strays.

of any kind, and carrying the same immediately to the owner thereof.

Ranger's book
may be search-
ed.

10. *And he it further enacted*, That for the more speedy recovery of strays, it shall and may be lawful for any person, at all times hereafter to look over and search the entry books by this act directed to be kept by the ranger in each county in this state, for any information he may want as to any horse, mare, gelding or colt, neat cattle, hog or sheep, which heretofore has, or hereafter may stray away from the owner thereof, the person requesting such search first paying one shilling therefor to the ranger keeping such book.

CHAP. 120.

An act to amend the staple of tobacco, and prevent frauds.

(See 1779, c.
159—1787, c.
265.)

1. **WHEREAS** the law heretofore in force for amending the staple of tobacco, and preventing frauds, hath been found highly beneficial to this state, as well as to the planters of that commodity ;

Inspectors con-
tinued.

2. *Be it enacted, &c.* That the inspectors of tobacco appointed by the county courts since the last session of assembly at any public ware-houses in this state, be, and they are hereby continued, and declared to be inspectors at the respective ware-houses for which they were appointed, until appointments can be had agreeable to this act, and shall have the same powers, authorities and emoluments, and be subject to the rules, regulations and restrictions, herein after mentioned.

County court to
appoint them,
their duty, and
manner of in-
spection.

3. *Be it enacted*, That the inferior court of any county in this state, where the tobacco inspections and ware-houses are already established, shall annually, at the first court to be held for their county after the first day of June, appoint two discreet and careful men, well acquainted with the nature and qualities of tobacco, to be inspectors (a) thereof, who shall well and carefully examine every hogshead, cask, or parcel of tobacco, brought to their ware-house, and such tobacco as they shall find good, sound, and merchantable, and fit for exportation, they shall cause to be immediately headed, hooped, and nailed, and the number nett. and weight and tare, with the name of the ware-house, stamped or marked thereon ; and for all tobacco so passed by them in crop hogsheds, they shall give to the owner thereof a receipt, containing the ware-

a (To hold
their offices du-
ring good beha-
viour, 1791, c.
345, s. 7.)

house, number, gross, tare, and nett weight, the kind of tobacco, and therein oblige themselves to deliver the same tobacco to such owner, or his order, for exportation, when demanded; and for all such tobacco as they shall pass in parcels, they shall give the owner a transfer note, and all such parcels of tobacco they shall immediately pack and prize into hogsheads of at least one thousand nett weight, to be by them paid in discharge of such transfer notes to the persons who shall be possessed of them, deducting from their transfer notes when returned to them, at the rate of two *per cent.* for the first month, and one *per cent.* for every month after one, for shrinkage, and may also charge out of such transfer notes thirty pounds of tobacco for the cask; and all tobacco brought into their ware-houses, which in their judgment is not good, sound and merchantable, they shall cause to be immediately burned; (a) and where tobacco is offered for inspection, and it appears to them part thereof is only fit to pass, the owner thereof may separate such good tobacco from the bad, and that only which is bad shall be burned; but if the owner refuses to have the same separated, then the inspectors shall and may burn the whole; and where the inspectors at any ware-house shall disagree in their opinion of the quality of any hogshead of tobacco, or where the tobacco to be inspected is the property of one of the inspectors, then another sworn inspector from the nearest ware-house, or justice of peace, shall be called, and shall decide, and receive or reject the same; and where any inspector shall die, or be rendered by sickness or accident unable to attend his duty, then it shall be lawful for any three justices of the county to appoint and swear in any proper person to act as inspector, until the disability of the other be removed, or until the court shall appoint; and such person so appointed to act shall be under the same penalties, and entitled to a proportionable part of the salary for the time he shall act, and be under the same regulations, as if originally appointed by the court.

a [Repealed as to burning, 1817, c. 942.]

Provision where an inspector shall die, or be unable to attend.

4. *And be it further enacted,* That the inspectors to be appointed in virtue of this act shall give bond and security, to be approved by the justices appointing them, in the penalty of one thousand pounds, payable to the governor or commander in chief for the time being, with condition they shall respectively execute the office of inspector of tobacco faithfully and truly, according to the laws

Bond to be given.

in that case made ; which bond, on any suggestion made to the commander in chief for the time being of a breach thereof, shall by him be assigned to the party injured, to be put in suit, and shall not be void on any recovery, until the whole penalty be recovered ; and such inspectors shall, before they enter on the duties of their office, take in open court the following oath, *to wit*,

The oath.

You shall swear, that you will carefully and diligently view and examine all tobacco brought to any public warehouse whereof you are appointed to be inspector, and all other tobacco which you shall be called upon to view and inspect, and that not separate and apart from your fellow, but in his presence. And that you will not receive any tobacco that is not in your judgment sound, well conditioned, merchantable, and clear of trash ; nor receive, pass or stamp, any tobacco hogshead, or cask of tobacco, prohibited by an act of assembly, entitled, an act for regulating the inspection of tobacco, and preventing frauds. And that you will not change, alter, or give out any tobacco, other than such hogshead or cask for which the receipt to be taken in was given ; but that you will in all things well and faithfully discharge your duty in the office of an inspector, according to the directions of the said act, without fear, favour, affection, malice, or partiality. *So help you God.*

No tobacco to be exported without inspection, and manner of delivering it out.

a [The duty of inspectors, prescribed, by 1789, c. 302.]

5. *And be it further enacted*, That no tobacco shall be exported out this state, until the same has been carried to some inspection, and there viewed, passed, and stamped, (*a*) according to the directions of this act, or which has already been so done, according to the laws heretofore in force ; and the inspectors at every inspection which is, or shall by virtue of this act be appointed, on delivering out any tobacco from their warehouse for exportation, shall deliver therewith to the master or skipper of the vessel receiving the same, a manifest thereof, signed by them, containing the marks, numbers, gross, nett and tare, of every hogshead or cask then delivered, with the name of the warehouse, and the name of the vessel and master thereof in which the same is intended to be exported, and the name of the skipper ; which manifest, in case the tobacco be delivered to any river craft, to be lightened down to any seaport, shall be delivered herewith by the skipper of such craft, on board the ship

[Their fees, 1803, c. 642.]

or vessel in which the same is to be exported ; or in case such vessel cannot take it in, then in the most convenient ware-house at or near such seaport, there to remain until the same shall be shipped in some other vessel for exportation, according to the true intent and meaning hereof ; and all tobacco water-borne with intention to elude this act, is hereby declared to be forfeited, and shall be the property of any person who shall seize and take possession of the same ; and in case of suit against the person seizing such tobacco, he may on the general issue give this act in evidence.

6. *And be it further enacted*, That the inspectors at Halifax ware-houses shall constantly attend their duty at the said ware-houses from the tenth day of October to the tenth day of July in every year, on penalty of forfeiting forty shillings for each day either of them shall neglect the same. sickness or other unavoidable accidents excepted ; which forfeiture shall and may be recovered by warrant before any magistrate of the county where the inspector resides, by any person suing for the same, to the use of the person suing, and shall furthermore be liable to the action of the party aggrieved for such damages as he may sustain ; and the inspectors at the said inspection of Halifax shall have and receive for their attendance the sum of seventy-five pounds each, and the inspectors at Jones's the sum of thirty-seven pounds ten shillings each, annually, to commence from the tenth day of October last past, to be paid by the justices of the inferior court for their respective counties out of the county money : And the justices of any county within this state may, and are hereby empowered, if necessary, to appoint such places (*a*) for the inspection of tobacco in their county, and inspectors (*b*) to attend thereat, as to them shall seem most proper, so as such place of inspection be at a landing on some sufficient navigable stream ; and also may, at the expense of their counties, purchase or rent ground, build or rent ware-houses, provide scales and weights, and other matters incident to an inspection, and allow such salaries to the inspectors as they shall judge proper, to be paid out of the money assessed for the maintenance and support of the county charges ; and also shall, at any such inspection, order and limit the time for the attendance of such inspectors at their respective warehouses ; and any inspector so to be appointed, shall be under the like bond, security and

Duty of Halifax inspectors, and their salaries.

Justices to appoint places of inspection.

a [Shall regulate ware house rent, &c. 1779, c. 159.]

b [Turners up and pickers, 1787, c. 265.]

oath, and subject to the same forfeiture, method of recovery, and application, as is above directed for the non-attendance of the inspectors at Halifax ware-houses.

Manner of
clearing ves-
sels with tobac-
co.

7. *And be it further enacted*, That no naval officer in this state, shall clear outwards any ship or vessel having tobacco on board, until the captain or master thereof shall produce and deliver to him such manifest as above directed, signed by the inspectors where the same was inspected, for all tobacco he has on board; and the naval officer clearing such ship or vessel, is hereby directed to administer to such captain or master, before delivering such clearance, an oath to this purport: That the manifest by him produced contains a true account of the mark, number, tare and nett weight, stamped or marked on each hogshead of tobacco on board his vessel, as they were taken down before the same was stowed away. And the said naval officer is hereby authorised to take and receive two shillings for administering the said oath. And every naval officer who shall clear out any vessel having tobacco on board, without receiving such manifest, and causing such oath to be made before them, shall forfeit the sum of fifty pounds proclamation money; to be recovered in any court of record in this state, by and for the use of any person who shall sue for the same.

Penalty for
forging inspec-
tor's notes, and
method where
they are lost.

8. *And be it further enacted*, That if any person shall forge or counterfeit the stamp, note or receipt, of any inspector, or offer for sale or payment, or demand of any inspector, tobacco on any such forged notes or receipt, knowing it to be such, or shall cause to be exported any hogshead or cask of tobacco stamped with a forged or counterfeit stamp, or shall take any stave, plank or heading, out of any hogshead of tobacco stamped as herein directed, after such hogshead shall have been delivered from any of the public ware-houses, every person so offending, and being thereof legally convicted, shall be adjudged a felon, and suffer as in cases of felony; and if any inspector's note shall be lost or destroyed, the owner thereof may, on making oath before some magistrate of the quantity of tobacco mentioned in the same, and that the note is lost or destroyed, and that he or she so making oath is the lawful owner thereof, and entitled to receive the tobacco therein mentioned, obtain a certificate from the justice administering such oath, and shall thereby be entitled to receive the tobacco for which the lost note was given; and if any person shall be convict-

ed of making a false oath, or producing a forged certificate, in the above case, knowing the same to be forged, he shall suffer as in cases of wilful and corrupt perjury.

9. *And be it further enacted,* That if any warehouse at any of the tobacco inspections in this state, that is or shall be appointed, shall happen to be burned, and tobacco therein destroyed, where such accident shall happen, no inspector shall be sued, by reason of any notes or receipts by them given for tobacco so burned.

Ware houses
burnt inspector
not to be sued.

10. *And be it further enacted,* That no inspector of tobacco shall be capable of being elected member of assembly, during his continuance in his office of inspector, or within one year after; nor shall any inspector, directly or indirectly, buy or receive, by way of barter, loan or exchange, any tobacco whatsoever, (payments in tobacco for their own rents excepted) under the penalty of forfeiting their office: And when any person demands tobacco of any inspector on their notes, and shall have cause to doubt the same hath received damage after inspection, three justices of the county, not being merchants, where the tobacco is, shall on the application of the person demanding the tobacco, repair immediately to the ware-house, and there (being first sworn by some other justice, who is hereby empowered to administer such oath) well and carefully view and examine the said tobacco in dispute, and give their opinion thereon whether the same ought to pass or be rejected, according to the best of their judgment and conscience, without favor or affection; and if in their judgment it is good, sound, and fit for exportation, the tobacco so passed shall be a sufficient tender to the party demanding on the notes for the same, and in that case the party so calling a review, shall pay and satisfy to the justices so attending, eight shillings each; but if they reject the tobacco so reviewed, in that case the inspectors shall pay the said justices eight shillings each, and shall be liable to the owner of the notes for the value of the tobacco so rejected, and such damages as he may sustain by lying out of the same from the time of demanding.

No inspector to
be a member of
assembly, and
method where
tobacco is sus-
pected to be
damaged

11. *And be it further enacted,* That no slaves within the counties of Halifax, Northampton, Bute, Granville, Edgcomb and Wake, for his own benefit, shall cultivate any tobacco, under the penalty of five pounds current money of this state for every five hundred hills, so cultivated, to be recovered from the master, owner or over-

Slaves in cer-
tain counties
not to cultivate
tobacco.

seer of such slaves, by action of debt, before any jurisdiction having cognizance thereof; one half to the informer, and the other half to the use of the county where such slave shall reside.

CHAP. 121.

An act declaring what fences are sufficient, and to provide a remedy for abuses.

What shall be a lawful fence.
a [The neglect of keeping up such a fence, during crop time, is indictable, 1791, c. 354.]

Manner of proceeding where trespasses are committed.

1. WHEREAS the peace and harmony of every neighbourhood much depends on good and sufficient fences;

2. *Be it therefore enacted, &c.* That every planter shall make a sufficient fence about his cleared ground under cultivation, at least five (a) feet high, unless where some navigable stream or deep water course shall be, that may be deemed sufficient instead of a fence aforesaid.

3. *And be it further enacted,* That upon complaint made by any person to any justice of the peace of the county of any trespass or damages done by horses, cattle or hogs, it shall and may be lawful for such justice, and he is hereby authorised and required, to cause to be summoned two freeholders, indifferently chosen, who (together with himself,) shall view and examine, on oath, whether the complainant's fence be sufficient or not, and what damage he hath sustained by means of the trespass, and certify the same under their hands and seals; and if it shall appear that the said fence be sufficient, then the owner of such horses, cattle or hogs shall make full satisfaction for the trespass or damages, to the party injured, to be recovered before any jurisdiction having cognizance thereof; but if it shall appear that the said fence be insufficient, then the owner of such horses, cattle or hogs, shall not be liable to make satisfaction for such injury or damages aforesaid.

4. *And be it further enacted,* That if any person whose fence shall be adjudged insufficient, shall with guns, dogs, or otherwise, unreasonably chase, worry, maim or kill, any horses, cattle or hogs, or cause the same to be done, such person so offending shall make full satisfaction for all such damages to the party injured, to be recovered as aforesaid.

Owners of unlawful fences to pay damages for any injury, &c.

CHAP. 122.

An act to encourage the building of public mills, and directing the duty of millers.

1. *Be it enacted, &c.* That every water grist mill already built, or which shall hereafter be built, that hath or shall at any time grind for toll, shall be held and deemed, and is hereby declared to be a public mill. Public mills.

2. *And be it further enacted,* That any person willing to build such mill, who hath land only on one side of a run, shall exhibit his petition to the county court, and therein shew who is the proprietor on the opposite side of the run, whereupon a summons shall issue to such proprietor to appear at the next court, and answer the allegations of such petition; and the court also at the same time shall order four honest freeholders to lay off, view, and value, on oath, an acre of the land of such proprietor, and also an acre of the land of the petitioner opposite thereto, and to report their opinion and proceedings thereon to the next court, and thereupon the court shall order the said report to be recorded: and if it take not away houses, orchards, gardens, or other immediate conveniences, shall and may, and are hereby empowered and authorised, to grant leave to the petitioner, or such proprietor, to erect such mill at the place proposed, as in their discretion shall seem reasonable, and to order the costs of such petition to be paid by the person to whom such leave shall be granted. Manner of proceeding to obtain leave to build a mill, where one side of a run only is owned by the person applying.

3. *Provided always,* That the person to whom such leave is granted shall pay down in court, for the acre of land he shall obtain thereby, the valuation money, and procure a record to be made thereof, which shall be a good and effectual seizen in law to create to such person, his heirs and assigns, a fee simple in such acre of land. Valuation paid down.

4. *And provided also,* That where any grist mill has been heretofore erected by order of court, it shall not be lawful for any court, on the petition of any person whatever, to grant any part of the tract whereon such mill stands, for the purpose of building another mill within two miles above or below the mill already erected. No mill within two miles of another.

5. *Provided nevertheless,* That it shall not be lawful for any court to grant leave to any person to erect a mill so as to overflow any other mill, or create a nuisance (a) Not to overflow another, or create a nuisance.

a [For the mode of redress, 1809, c. 773—1813, c. 863.]

to the neighbourhood, any thing herein contained to the contrary notwithstanding

When to be built.

6. *Provided also*, That the person so being seized, shall within one year begin to build a water mill, and finish the same within three years, and shall thereafter keep up the same for the use and ease of all such as shall be customers to it, otherwise the said land shall return to the person from whom it was taken, or to such other person as shall have his right, unless the time for finishing the same, for reasons shewn to and approved of by the court, be enlarged.

Proviso for feme covert, &c.

7. *Provided likewise*, That if any water mill belonging to any person within the age of twenty-one years, *feme covert*, *non compos mentis*, or imprisoned, be let fall, burnt, or otherwise destroyed, that then such person or persons, and their heir or heirs, shall have three years to rebuild and repair such mill, after his or their full age, discovery, coming of sound mind, or enlargement out of prison.

Right of appeal.

8. *And be it further enacted*, That if any person shall think himself aggrieved by the order or determination of the county court, he may appeal therefrom to the next superior court for the district in which the said land doth lie, giving bond and security as usual; which court shall and is hereby authorised and empowered to take cognizance of the same, and to confirm such order, or reverse the same, and to give such judgment therein as the county court ought to have rendered.

Title confirmed to mills built by order of court.

9. *And be it further enacted*, That every person who hath built any mill in consequence of any order of court, and hath actually paid the money according to the valuation of any acre of land as by this act directed, to be laid off and valued, shall be, and is hereby declared to stand seized thereof, to him, his heirs and assigns, in absolute property, in the same manner, and under the same restrictions, limitations and conditions, as if the same had been originally granted by virtue of the powers and authorities of this act.

Toll, and to grind in turn.
a [One eighth of Indian corn, and one eighth of wheat, in Halifax and Fayetteville districts, 793, c. 402.]

10. *And be it further enacted*, That all millers shall grind according to turn, and shall well and sufficiently grind the grain brought to their mills, if water will permit, and shall take no more toll for grinding than one-sixth part of the Indian corn, and one-eighth part of the wheat, in the districts of Edenton, Newbern, Wilmington and Halifax, (a) and the eighth of the corn and wheat

in the districts of Hillsborough and Salisbury, and one-fourteenth part for chopping grain of any grind; and every miller, or keeper of a mill, making default herein, viz. not grinding according to turn, nor well and sufficiently grinding the grain, if water will permit as aforesaid, or exacting or taking more toll than herein is set down and allowed, shall for every such offence forfeit and pay twenty-four shillings proclamation money to the party injured, to be recovered before any justice of the county wherein such offence is committed, with costs. *Provided nevertheless*, That it shall be in the power of any such owner to grind, or cause to be ground, his own grain, at any time he thinks fit, any thing in this act to the contrary notwithstanding.

Proviso for
their own grain.

11. *And be it further enacted*, That all millers shall keep in their mills the following measures, viz. a half bushel and peck at full measure, and also proper toll dishes for each measure; and every owner, by himself, servant or slave, keeping any mill, and shall be lawfully convicted of keeping false toll dishes, contrary to the intent and meaning of this act, shall forfeit and pay to the party injured five pounds, to be recovered before any justice of the county as aforesaid; and in case such miller is a free person, and keeps such mill for a share or for hire, and is guilty of any of the above offences, it shall be lawful for the owner to stop so much of his share or hire, as will be sufficient to reimburse himself for such fine or fines as he shall become answerable for, with all the charges that shall become due thereon.

Mill measures
and penalty for
neglect.

CHAP. 123.

An act to prevent burning the woods.

1. **WHEREAS** the frequent burning of the woods is found to be destructive to cattle and hogs, extremely prejudicial to the soil, and often times of fatal consequences to planters and farmers, by destroying their fences and other improvements: for prevention of which evils,

2. *Be it enacted, &c.* That it shall not be lawful for any person whatsoever to set fire to any woods (a) except it be his own property, and in that case it shall not be lawful for him to set fire to his own woods without first giving notice to all persons owning lands adjacent to such wood lands intended to be fired, at least two days before

In what manner
alone woods
may be set fire
to.

a [Subject to a
fine of 25*l.* & liable
to the party
injured, 1782,
c. 182.]

the time of setting such woods on fire, and also taking effectual care to extinguish such fire before it shall reach any vacant or patented lands, contiguous to or adjacent such lands so fired.

Penalty on negroes, &c. violating this act.

a [The whipping as to free persons repealed by 1782, c. 182.]

3 *And be it further enacted*, That if any slave, free negro, or mulatto, or vagrant person, unable to pay the fine aforesaid, shall be convicted of setting fire to any woods, contrary to the true meaning of this act, such person, on conviction thereof, shall have and receive on his bare back thirty-nine lashes, well laid on, at the public whipping (*a*) post.

CHAP. 124.

An act to facilitate the navigation of port Currituck.

(See 1783, c. 194.)

1. WHEREAS the erecting of stakes and beacons from Albemarle through the sound to Currituck inlet, will tend much to the interest and advantage of sundry merchants, masters and owners of vessels, belonging to this state, in negotiating and carrying on their business, trade and commerce to and from the state of Virginia :

Commissioners for clearing the navigation.

2. *Be it therefore enacted, &c.* That John Humphries and Thomas Taylor be, and are hereby constituted and appointed commissioners, and authorised and empowered to agree and contract with such person or persons as are willing and fit to be employed, for clearing away and removing any obstructions found in the channel from Albemarle through the sound to Currituck inlet, and for staking out the said channel, and erecting beacons, for the better discovery thereof by such masters of vessels and mariners as shall sail along the same, in such manner as the said commissioners shall conceive will best promote the navigation of the said port, provided that the sum they shall engage to pay the person or persons so doing the services aforesaid, do not exceed the sum of one hundred pounds.

Penalty for destroying beacons.

3. *And be it further enacted*, That if any person or persons shall wilfully pull down, remove or destroy, any beacon, stake, or other mark, erected or placed in virtue of this act, he or they shall for every such offence forfeit and pay the sum of five pounds, to be recovered before any jurisdiction having cognizance thereof; one half to the naval-officer of the said port, to be paid and applied for the purposes and in manner aforesaid, and the other half to him or them that will sue for the same.

CHAP. 125.

An act for dividing Edgcomb county, and other purposes therein mentioned.

1. WHEREAS the large extent of the county of Edgcomb renders it grievous and troublesome to many of the inhabitants thereof to attend the courts and general elections, and other public meetings appointed therein;

2. *Be it therefore enacted, &c.* That from and after the present session of Assembly, the said county of Edgcomb be divided by a line, beginning at the cool springs, at John Powell's, on fishing creek, thence running to the falls of Tar river, from thence to the widow Rose's on Contentney; and that all that part of the late county of Edgcomb which lies to the east of the said dividing line, shall continue and remain a distinct county, by the name of Edgcomb; and that all that other part of the said county of Edgcomb which lies west of the said dividing line, shall thenceforth be erected into a new and distinct county, by the name of Nash county.

Edgcomb divided, and Nash erected.

CHAP. 126.

An act for erecting the district of Washington into a county, by the name of Washington county. (See 1789, c. 299, s. 1.)

1. *Be it enacted, &c.* That the late district of Washington, and all that part of this state comprehended within the following lines, shall be erected into a new and distinct county, by the name of Washington, county, viz. beginning at the most north-westerly part of the county of Wilkes, on the Virginia line; thence running with the line of Wilkes county, to a point thirty-six miles south of the Virginia line; thence due west, to the ridge of the great iron mountain which heretofore divided the hunting grounds of the Overhill Cherokees, from those of the Middle Settlements, and Valley; thence running a south-westerly course, along the said ridge, to the Unacoy mountain where the trading path crosses the same from the Valley to the Overhills; thence south with the line of this state, adjoining the state of South-Carolina; thence due west, to the great river Mississippi; thence up the said river the courses thereof, to a point due west from the beginning; thence due east with the line of this state, to the beginning: and it is hereby declared, that all that part of this state comprehended within the lines afore-

Washington erected.

Part of Salisbury district.

said, shall from henceforth be and remain the county of Washington, and shall be, and is hereby declared to be part of the district of Salisbury.

Part of Burke.

2. *And be it further enacted, and it is hereby declared,* That all that part of this state, lying west of Rowan county, and south of the county of Washington, shall be, and is hereby declared to be part of the county of Burke.

CHAP. 127.

An act for erecting part of the county of Surry, and part of the district of Washington, into a separate and distinct county by the name of Wilkes.

1. WHEREAS the large extent of the county of Surry, and the district of Washington, renders it grievous and burthensome to many of the inhabitants thereof to attend the courts, general musters, and other public meetings therein;

Wilkes erected.

2. *Be it therefore enacted, &c.* That from and after the fifteenth day of February next, after the passing of this act, the said county of Surry and district of Washington be divided by the following lines; Beginning at a point twenty-six miles due west of Surry court-house, thence north to the Virginia line, thence west along the said line to the ridge that divides the waters of Holstein and New rivers, thence along the said ridge to Burke county line, thence eastwardly along the line that divides the counties of Surry and Burke to Rowan county line, thence along Rowan county line to a point due south of the beginning, thence north to the beginning, be erected into a distinct county, by the name of Wilkes.

CHAP. 128.

An act for adding part of the county of Duplin to Johnston.

1. WHEREAS the upper part of Duplin county is very extensive in length, which renders it burthensome to the inhabitants of Johnston and Cumberland counties, by reason of the said county of Duplin running up twenty miles between Johnston and Cumberland counties, not more than three miles wide, which obstructs the making of roads, and keeping them in repair, much to

the injury of the inhabitants of the aforesaid counties, and damage of travellers;

2. *Be it enacted, &c.* That all that part of Duplin county, above Dismal creek, be added to the county of Johnston, and that it be divided by said creek, beginning at the mouth of the creek, Cumberland line, thence running up the meanders of the said creek an east course to Johnston county line; and that from and after the passing of this act, all that part of Duplin county above said creek be annexed to, and made part of the county of Johnston, and the inhabitants thereof shall be subject and liable to the same rules, orders, taxes and privileges as any other the inhabitants of the county of Johnston.

Part of Duplin added to Johnston.

CHAP. 129.

An act for levying a tax for defraying the contingencies of the several counties in this state, and other purposes.

5. *And be it further enacted,* That the justices of the several county courts in this state shall, during the sitting of their respective courts to be held next after the first day of July yearly and every year appoint one good and proper person to act as a trustee for one year for the purposes herein mentioned, which appointments shall be entered on the records of the said court; and the person so appointed, after giving bond and sufficient security for the faithful discharge of his duty, agreeable to the directions of this act, and the orders of the court, is hereby directed, and shall have full power and authority to sue for, recover and receive, from the late sheriff of the county, and from all other persons, all monies which may be in their hands due and payable to, and for the use of such county, and shall also receive from the collectors all such sums of money as they shall be liable for in virtue of this act; which monies the trustees respectively shall apply as the county court may direct, and to no other use or purpose whatsoever.

Justices to appoint a county trustee.

4. *And be it further enacted,* That in case of the death, disqualification, neglect, or refusal to act, of any of the trustees by this act to be appointed, the court of the county where such death, disqualification, neglect or refusal shall happen, may proceed to appoint one other good and proper person to fill up such vacancy until the next annual appointment, under the rules and regulations be-

Succession of trustees kept up.

fore described ; and such trustee, during his continuance in that appointment, shall have the same powers and authorities which by this act are given to other county trustees; and the county courts in this state are hereby respectively invested with full power to direct the application of all monies arising by virtue of this act to and for the purposes herein mentioned, and to any other good and necessary purpose for the use of the county, and may allow the county trustee a reasonable salary out of the same for his services.

Penalty on persons neglecting their duty.

5. *And be it also enacted*, That in case any justice of the peace, or trustee of any county in this state, shall neglect or refuse to do and perform the several and respective duties by this act required, or any of them, or if the clerk of any county shall neglect or refuse to furnish the several collectors in due time with attested copies of such orders as the court of his county may make respecting the collection of the aforesaid tax, the person so offending, refusing or neglecting, shall forfeit and pay for every neglect or refusal the sum of five pounds good and lawful money of this state ; to be recovered by action of debt, in the name of the governor or commander in chief for the time being, to and for the use of the county where the offence was committed.

CHAP. 130.

An act for adding part of Brunswick county to Bladen, and part of Bladen to Brunswick county.

1. WHEREAS that part of Brunswick county on the western side of Waggamaw lake, lying between the dividing line of Brunswick and Bladen counties, and the swamp called the Devil's Elbow, renders it extremely inconvenient for the few persons who reside thereon to attend courts and public duties in Brunswick county, being obliged to go a considerable distance into Bladen county, and to make a large circuit before they can get into their own county on any direct road ; and whereas the lands on the northern side of the said swamp is of easy access on the Bladen side, and proves an assylum for vagabonds and persons of evil fame, who do not pay taxes in any county, and are out of the reach of any process that can issue from Bladen, to the great prejudice of the neighbouring inhabitants ; and whereas those parts of Bladen

county on the eastern side of the north-west river, as high up the said river as Brunswick county reaches on the western side, make part of the plantations of the inhabitants of Brunswick county who live on the said river, and will make it very inconvenient and expensive for them to give in their lands and other estates in Bladen county, and subject them to many other inconveniences: for remedy whereof,

2. *Be it enacted, &c.* That all that part of Brunswick county on the western side of Waggamaw lake, lying between Brunswick and Bladen line, and the southern side of the swamp known by the name of the Devil's Elbow, beginning at the outlet from the said lake, and running round the outermost side of the said swamp called the Devil's Elbow, until it intersects the said line a south-west course to the province line, shall be, and is hereby added to, and made part of Bladen county; and that all those parts of Bladen county lying on the eastern side of the north-west river, beginning at the upper corner of the plantation of John Grainger, sen. esq. on the same side of the river, and running thence a north-east course to Black river, including all the lands from the said line downwards to New-Hanover line, be, and are hereby added to, and made part of Brunswick county.

Part of Bladen
added to Brung-
wick.

CHAP. 131.

An act for adding part of Anson county to Bladen.

1. WHEREAS the inhabitants of the lower end of Anson county labour under great inconveniences in attending the courts and other public meetings of the said county at the court-house thereof, and being more convenient for those purposes to the county of Bladen, are desirous to be annexed thereto;

2. *Be it therefore enacted, &c.* That James Pickett, Charles Medlock, Abraham Barns, and Richard Smith, esquires, be, and they are hereby appointed commissioners, and they, or a majority of them, are required and directed, within three months after the passing of this act, to run and mark, or cause the same to be done, a line from Drowning creek bank, beginning where Overstreet's bridge formerly was, thence running the shortest course to the dividing line between this state and the state of South-Carolina; and all that part bounded to the lower

Part of Anson
added to Bla-
den.

end by the line above directed to be marked, and along the said south line to where it crosses Drowning creek, shall be, and is hereby annexed to, and made part of the county of Bladen, and the inhabitants thereof shall be subject and liable to the same rules, orders, taxes, and privileges, as any other of the inhabitants of the said county of Bladen.

Read three times, and ratified in General Assembly, ?
the 24th day of December, 1777. §

SIGNED BY

SAMUEL ASHE, S. S.

ABNER NASH, S. C.

Richard Cas-
well, Esq. go-
vernor.

At a General Assembly, begun and held at Newbern, on the fourteenth day of April, in the year of our Lord one thousand seven hundred and seventy-eight, and in the second year of our Independence :
Being the first session of this Assembly.

CHAP. 132.

See 1777, c.
114, and refer-
ences in the
margin.

An act to amend an act, entitled, An act for establishing offices for receiving entries of claims for lands in the several counties within this state, for ascertaining the method of obtaining titles to the same, and for other purposes therein mentioned.

1. WHEREAS it has been found by experience that divers parts and clauses in the said act are defective, so as to require in some places an explanation, and in others an amendment ;

Surveyor's fees
to be paid to
himself.

2. *Be it enacted, &c.* That no entry taker for the future shall presume to take or receive the fees due by law to the surveyor, but that the same shall be paid to the surveyor himself, at the time he really makes the survey, by the person requiring such service ; and that all fees heretofore received by entry takers for the use of any surveyor, be on application fairly returned to the person who made the entry, and paid such fees.

Disputed claims
of persons in
the army sus-
pended.

3. And whereas by an act of this present session of assembly, it is provided, that two thousand six hundred and forty-eight effective men be immediately called forth from this state into the service of the United States, for a space of time therein mentioned ; and whereas by reason of such service, great inconvenience and disappointments may arise to those of them who have made, or may make any entry of a claim for lands in this state

respecting a completion of their titles; *Be it enacted*, That [Obsolete.] in all cases of disputed claims, where any of the persons aforesaid, or any other person in the continental service from this state, may be a party, that all proceedings thereupon be suspended and stopped until the first day of May, one thousand seven hundred and seventy-nine, or until the legislature shall take further measures thereupon; and every procedure contrary to the true intent and meaning of this section, is and are hereby declared to be utterly void, and of no force or effect in law, of which all entry takers and surveyors are expressly required and commanded to make due observance.

4. *And be it further enacted*, That for the future no person shall presume to enter or survey any lands within the Indian hunting grounds, or without the limits of the land heretofore ceded by the Indians, or conquered from them, which limits westward are hereby declared to be as follows, *that is to say*, Beginning at a point in the dividing line which hath been agreed upon between the Cherokees and colony of Virginia, where the line between that commonwealth and this state (hereafter to be extended) shall cross or intersect the same; running thence a right line to the North Bank of Holstein river, at the mouth of Cloud's creek, being the second creek below the Warrior's Ford, at the mouth of Carter's Valley, thence a right line to the highest point of a mountain called the High Rock, or Chimney Top; from thence a right line to the mouth of Camp creek, otherwise called M-Names's creek, on the south bank of Nol-lechuckie river, about ten miles (be the same more or less) below the mouth of Great Limestone; and from the mouth of Camp creek aforesaid, a south-east course, to the top of the ridge of the mountain called the Great Iron Mountain, being the same which divides the hunting grounds of the Overhill Cherokees from the hunting grounds of the Middle Settlements, and from the top of the said ridge of the Iron Mountain a south course to the dividing ridge between the waters of French Broad river, and the waters of Nol-lechuckie river; thence a south-westerly course along the said ridge to the great ridge of the Appalachian mountains which divide the eastern and western waters; thence with the said dividing ridge, to the line that divides the state of South-Carolina from this state: And that all entries and surveys of land hereto-

No lands to be entered within the Indian bounds.

fore made, or which hereafter may be made within the said Indian boundaries, are hereby declared to be utterly void, and of no force or effect; and the entry takers for the counties of Burke and Washington are hereby strictly commanded immediately to refund to the proper persons all sums of money by them received for the purpose of any entry within the Indian limits as aforesaid, their own fees for making the entry included.

Dividing lines
how run.

α [See 1777, c.
114. s. 10.]

Houses of wor-
ship secured to
their uses.

Repealing
clause.

b. *And be it further enacted*, That the surveyors shall run all dividing lines between party and party, (a) according to the directions they may receive from them, or agreeable to directions from a jury, in cases of contested and disputed claims, without regarding the cardinal points; any law, usage or custom to the contrary notwithstanding.

6. *And be it further enacted*, That all houses and edifices erected for, and dedicated to the worship of Almighty God, where the same may have been on vacant or unappropriated lands, together with two acres adjoining the same, shall hereafter be held and kept sacred for divine worship, to and for the use of such society or sectary by which the same was originally established.

7. *And be it further enacted*, That so much of an act of Assembly, entitled, An act for opening the land-office, &c. passed at Newbern, in December, one thousand seven hundred and seventy-seven, which comes within the purview and meaning of this act, be and the same is hereby declared to be repealed and made void, as if the same had never been made.

CHAP. 133.

An act to enforce such parts of the statute and common laws as have been heretofore in force and use here, and the acts of Assembly made and passed when this territory was under the government of the late proprietors and the crown of Great-Britain, and for reviving the several acts therein mentioned.

1. WHEREAS doubts may arise, upon the revolution in government, whether any and what laws continue in force here: for prevention of which,

Statutes, &c.
enforced.

δ [See 1715, c.
5, s. 2, 3—1777,
c. 115, s. 35.]

2. *Be it enacted, &c.* That all such statutes, and such parts of the common law, as were heretofore in force and use within this territory, (b) and all the acts of the late general assemblies thereof, or so much of the said statutes, common law, and acts of assembly, as are not destruc-

tive of, repugnant to, or inconsistent with the freedom and independence of this state, and the form of government therein established, and which have not been otherwise provided for, in the whole or in part, not abrogated, repealed, expired, or become obsolete, are hereby declared to be in full force within this state.

CHAP. 134.

An act to establish rules to be observed in solemnizing the rites of matrimony. See 1741, c. 23.

1. WHEREAS it is absolutely necessary that rules should be observed concerning celebrating the rites of matrimony ;

2. *Be it therefore enacted, &c.* That all regular ministers of the gospel of every denomination, having the cure of souls, and all justices of the peace in this state, are hereby authorised and empowered to solemnize the rites of matrimony, according to the rites and ceremonies of their respective churches, and agreeable to the rules in this act prescribed ; and the said ministers may demand and take for every couple by them married, if by license, the sum of twenty shillings lawful money of this state, and if by publication, the sum of ten shillings like money, to their use, and no more.

Matrimony how solemnized.

3. *And be it further enacted,* That the clerk of each county court is hereby authorised and empowered to grant marriage licenses to any person applying for the same, first taking bond, in the name of the governor for the time being, and his successors, with sufficient security, in the sum of five hundred pounds lawful money of this state, with condition that there is no lawful cause to obstruct the marriage for which such license is desired, to be recovered by action of debt, in any court of record having cognizance thereof, by the party grieved ; which bond aforesaid shall be taken, and license granted, by the clerk of the county in which the feme resides, which license shall be directed to any authorised minister or justice of the peace, and may demand and take the sum of sixteen shillings lawful money of this state, and no more, for his service in taking bond and granting license as aforesaid.

License granted.

4. *And be it further enacted,* That every minister of the gospel, qualified as in this act before directed, or any other person appointed by their respective church as a

Banns to be published.

reader, is hereby authorised and empowered to publish the banns of matrimony between any two persons requesting the same, provided that every publication shall be made three several Sundays in the congregation immediately after or during divine worship, and shall give a certificate of such publication when demanded, directed to any authorised minister or justice of the peace, and may demand and take for his service, the sum of four shillings lawful money of this state, and no more. *Provided*, That the people called quakers shall retain their former rules and privileges in solemnizing the rites of matrimony in their own church, any thing in this act contained to the contrary notwithstanding.

Penalty for
marrying un-
lawfully.

5. *And be it further enacted*, That if any minister or justice of the peace shall knowingly join together in matrimony any two persons, in any other way or manner other than by this act directed, shall forfeit and pay for every such offence the sum of fifty pounds lawful money of this state; to be recovered by action of debt, in any court of record having cognizance thereof, one half to him that will sue for the same, and the other half to be applied by the court to the use of the county where such forfeiture ariseth, and be also liable to an action of damage to the party grieved: and if any clerk shall knowingly grant marriage license, in any way or manner other than by this act directed, he shall forfeit and pay for every such offence the sum of one hundred pounds lawful money of this state; to be recovered and applied as other fines in this act before directed, and be also liable to an action of damage to the party grieved.

And on clerks
for granting li-
cense.

CHAP. 135.

An act for procuring a Great Seal for this State.

[See 1791, c.
344.]

1. WHEREAS it is necessary that a great seal be procured, to be used by the governor for the time being as the seal of this state:

Great seal to be
made.

2. *Be it therefore enacted, &c.* That William Tisdale, esq. be and he is hereby appointed to cut and engrave a seal, under the direction of his excellency the governor, for the use of the state; and the said seal, when engraved, shall be called the great seal of the State of North-Carolina, and shall be used and affixed by the governor for the time being to all grants, proclamations, and other public acts of the executive authority of this state.

CHAP. 136.

An act for quieting and securing the Tuscarora Indians, and others claiming under the Tuscaroras, in the possession of their lands. [See post c. 137 —1780, c. 167.]

1. *Be it enacted, &c.* That Whitmell Tuffdick, chief or headman of the Tuscarora nation, and the Tuscarora Indians, now living in the county of Bertie, shall have, hold, occupy, possess and enjoy, all the lands lying in the county of Bertie aforesaid, whereof they are now seized and possessed (being part of the lands heretofore allotted to the Indians aforesaid by solemn treaty, and confirmed to them and their successors by act of assembly, in the year one thousand seven hundred and forty-eight) without let, molestation or hindrance, clear of all quit-rents, or any public demand by way of tax whatever, to them the said Tuscarora Indians, and their heirs and successors; and that they the said Tuscaroras, and their heirs and successors, shall forever be clear and exempt from every kind of poll tax.

Indian lands secured to the Indians.

2. And whereas the said Tuscarora Indians, by nature ignorant, and strongly addicted to drinking, may be easily imposed on by designing persons, and unwarily deprived of their said lands; *Be it enacted,* That no person, for any consideration whatever, shall hereafter purchase, buy or lease, any tract or parcel of land now claimed by, or in possession of the said Tuscarora Indians, or any of them; nor shall any person settle on or cultivate the said lands, or any part thereof, in his own right, or under pretence as acting as overseer for the Indians; and if any person shall hereafter purchase, buy or lease any lands of the said Indians, or settle on or cultivate any part thereof, in his own right, or as overseer for the Indians, all such purchases, sales, leases and agreements, shall be, and they are hereby declared null and void; and the person so purchasing, buying or leasing, settling on or cultivating the said lands, or any part thereof, shall forfeit and pay the sum of three hundred pounds current money for every hundred acres by him so purchased, bought or leased, settled on or cultivated as aforesaid, one half to the use of the said Tuscarora Indians, the other to the use of him or her who shall sue for same; to be recovered by action of debt, bill, plaint, or information, in any court having cognizance thereof. *Provided,* That the said Tuscarora Indians may sell or dispose of their lands, or any part

No purchases to be made of the Indians, nor their lands cultivated.

But with consent of the general assembly.

thereof, with consent of the general assembly first had and obtained.

Former purchases from the Indians, under the sanction of the assembly, secured,

3. And whereas the chieftains and head men of the Tuscarora nation, living in the county, did on the twelfth day of July, in the year one thousand seven hundred and sixty-six, for the consideration of fifteen hundred pounds to them paid by Robert Jones, jun. William Williams, and Thomas Pugh, by indenture under their hands and seals, demise, grant, and to farm let, unto the said Robert Jones, William Williams, and Thomas Pugh, a certain tract of land lying in the county aforesaid, containing about eight thousand acres, more or less, bounded as follows, *to wit*, Beginning at the mouth of Deep creek, otherwise called Falling run; thence running up the said creek to the Indian Head Line; thence by the said line south seventeen degrees east, twelve hundred and eighty pole; thence a course parallel with the general current of the said creek to Roanoke river; and then up the river to the beginning; together with the appurtenances thereto belonging, to be held and enjoyed by the said Robert Jones, William Williams, and Thomas Pugh, their executors, administrators and assigns, in severalty, for and during the term of one hundred and fifty years, as may more fully appear by the said indenture, registered in the county court of Bertie aforesaid, and ratified by act of Assembly, passed at Newbern, in the year one thousand seven hundred and sixty six; *Be it enacted*, That each and every of the persons entitled to claim under the demise aforementioned, or by grants from the persons claiming under the same, or either of them, and their heirs and assigns, shall and may have, hold, occupy, possess and enjoy, the several shares, dividends or parcels of the said land to them belonging, in as full, free and absolute manner, and with the same legal privileges and advantages, in every respect, and subject to the same taxes, as if the said land had been originally granted to the said Robert Jones, William Williams and Thomas Pugh, by Lord Granville or by this state.

Regulation in regard to former demises.

4. And whereas the said Tuscarora Indians, for good and sufficient reasons, and for valuable considerations, have since the twelfth day of July, one thousand seven hundred and sixty-six, and previous to the first day of December last, demised, granted, and to farm let, sundry tracts or parcels of land lying in said county of Bertie.

to sundry persons, as by indentures duly executed may more fully appear; *Be it enacted*, That all the lands contained in the last mentioned demises, if the said demises were fairly, *bona fide*, and without fraud, made by, and obtained from the said Tuscarora Indians, since the year one thousand seven hundred and sixty-six, and previous to the first day of December last past, shall not be deemed vacant lands, or be liable to be entered as such in the land-office, unless the general assembly shall hereafter so direct, but nevertheless shall be subject to the same taxes as other lands in this state are liable to.

5. And whereas it is suggested by the said Tuscarora Indians, that unfair dealing has been used in obtaining one or more of the demises afore-mentioned, and they the said Indians have at present no mode for obtaining redress in such cases; *Be it therefore enacted*, That the commissioners herein after mentioned, or a majority of them, shall and may, upon complaint of the said Tuscarora Indians, in court or meeting assembled, that any person or persons has or have unfairly or fraudulently obtained any grant or demise for lands to them belonging since the year one thousand seven hundred and sixty six, and previous to the first day of December last, summon the person or persons so complained against, or cause him or them to be summoned, to appear before them on a certain day on the land in dispute, (giving at least ten days notice previous to the day in such summons appointed) then and there to answer the complaints of the Indians for having fraudulently or unfairly obtained a grant or demise of the land in question; and shall also summon, or cause to be summoned, a jury of twelve men, being freeholders in the said county of Bertie, and not resident on, or owners of any lands, purchased of the said Tuscarora Indians: And the said commissioners, or a majority of them, shall attend at the time and place appointed, with the jury aforesaid, and having first sworn the jury to try and determine fairly between the said Indians, and the person or persons complained against, shall and may cause witnesses to be examined, on both sides, and receive the verdict of the jury, and return the same, with the pannel, to the next county court of the said county of Bertie, to be entered upon record, and such verdict shall be as good and effectual as if obtained in any court of record; and if the same be general, the said commissioners, or a majority of them,

Method of trial for demises alleged to have been unfairly obtained.

shall and may appoint one or more person or persons to carry the same into execution ; but if special, then the court shall decide thereon, and cause the sheriff of the county to carry such decision into execution.

Commissioners
for Indian af-
fairs.

6. And whereas the said Indians are often injured by horses, cattle and hogs, driven on their lands by the white people, the said horses, cattle and hogs breaking into their enclosures, and destroying their corn and other effects, and are also frequently deprived of their property. and abused by ill-disposed persons : For remedy whereof, and also for recovery of rents or demands now due, or which may hereafter become due and owing to the said Tuscarora Indians ; *Be it enacted*, That William Williams, Thomas Pugh, Willie Jones, Simon Turner, and Zedekiah Stone, be, and they are hereby appointed commissioners for the said Indians ; and they, or any three of them, shall and may enquire into the complaints made by the said Indians, summon the persons complained against before them, and award such restitution and redress as to them shall seem just and necessary ; and may appoint an officer or officers to serve subpœnas, and to execute such awards and determinations as they shall or may make in regard of the premises : And the court of the said county of Bertie is hereby authorised and required to fill up, from time to time, by new appointments any vacancies which may happen among the commissioners, by death or resignation ; and upon complaint of the chief or head man of the nation, and the rest of the Indians, in court or meeting properly assembled, against any one of the commissioners for misbehaviour, may enquire into the conduct of the person or persons complained against, remove him or them if necessary, and appoint another or others in his or their stead.

Reversion of In-
dian lands.

7. *And be it further enacted*, That the lands leased by the said Tuscarora Indians to Robert Jones, Jun. William Williams, and Thomas Pugh, and to other persons, shall revert to, and become the property of the state, at the expiration of the terms the several leases mentioned, if the said nation be then extinct : And the lands now belonging to, and possessed by the said Tuscaroras, shall revert to, and become the property of the state, whenever the said nation shall become extinct, or shall entirely abandon or remove themselves off the said lands, and every part thereof. *Provided*, That no person shall have any preference of entry to any of the said lands by

virtue of any lease or occupancy whatsoever since December, one thousand seven hundred and seventy-six, whenever the General Assembly shall declare the said lands to be vacant.

Read three times, and ratified in General Assembly, }
the second day of May, Anno Dom. 1778. }

SIGNED BY

WHITMILL HILL, S. S.

THOMAS BENBURY, S. C.

At a General Assembly, begun and held at Hillsborough, on the eighth day of August, in the year of our lord one thousand seven hundred and seventy-eight, and in the third year of the independence of the said state : being the second session of this assembly. Richard Caswell, Esq. governor.

CHAP. 137.

An act to prevent trading with the Cherokee Indians, without license first had and obtained; and also to prevent trespasses upon the Indian hunting grounds. [See ante c. 136, & 1780, c. 167.]

1. WHEREAS divers avaricious and ill-disposed persons, have by frauds in traffick, or by trespassing upon the hunting grounds of the Cherokee Indians, and divers other abuses, excited their jealousies and suspicions, which if not seasonably quieted, and such abuses in future prevented, may involve this and other of the United States, in a bloody and expensive Indian war.

2. *Be it therefore enacted, &c.* That no person or inhabitant of this state, shall trade, traffick or barter, with the Cherokee Indians within the Indian country, unless he shall first obtain a license for so doing from the judges of the superior courts; and if any person shall trade, traffick or barter, contrary to the true spirit and intention of this act, such person or persons so offending, shall, upon conviction thereof, duly had and obtained in the superior court of the district nearest the place where such offence shall have been committed, forfeit and pay the sum of five hundred pounds current money of this state, one half thereof to the use of the informer, the other to the governor of this state, to be applied to defray the contingent charges of government; to be recovered by action of debt, bill, plaint or indictment, wherein no essoin, excuse or plea in abatement shall be admitted to the jurisdiction of the said court, nor shall process be discontinued for or

Penalty for trading with the Indians.

by reason of any omissions or errors not substantially material; and in case such offender or offenders shall not within twenty-four hours after conviction, pay into hands of the sheriff of the county in which such district court shall be held, the said sum of five hundred pounds, and all costs arising upon such prosecution, he shall stand in the pillory two hours, and receive thirty-nine lashes upon his bare back, and shall stand committed to the gaol of the district until such sums shall be completely discharged and paid.

For trespassing
on their
grounds.

3. *And be it further enacted*, That if any person shall hereafter be guilty of trespassing upon the Indian hunting grounds, knowing them to be such, he shall suffer the same penalties, fines and forfeitures, to be prosecuted, sued for and recovered, and inflicted, as are by this act heretofore directed, with respect to persons trafficking with the Cherokee Indians, and under the same rules, regulations, latitude and restrictions, prescribed to be had against the offenders specified in this act heretofore, and all fines and forfeitures shall be applied in manner as before directed.

ALLEN JONES, S. S.

THOMAS BENBURY, S. C.

Richard Cas-
well, Esq. go-
vernor.

At a General Assembly, begun and held at Newbern, on the fourteenth day of April, in the year of our lord one thousand seven hundred and seventy-eight, and from thence continued by adjournments and prorogations to the nineteenth day of January, at Halifax, in the year of our lord one thousand seven hundred and seventy-nine: being the third session of this assembly.

CHAP. 138.

Provided for by
subsequent acts
except these
sections.

Execution may
issue for fees.
[See 1784, c.
23, s. 8.]

An act to regulate and ascertain the fees of clerks in the superior and county courts, justices of the peace and attornies, in this state, and directing the method of paying the same, and other purposes.

1. *And be it further enacted*, That it shall and may be lawful for the clerks of the superior and county courts, on the fees not being paid by the party from whom they are due, to make out execution, directed to the sheriff of the county where the party resides, and the said sheriff shall levy the same by virtue of the said execution as in other cases; and to the said execution shall be annexed a copy of the bill of costs of the fees on which such execution shall issue, wrote in words at length, without any abbrevi-

viation whatsoever; and all executions issuing without the copy of such bill of costs annexed, shall be deemed illegal, and no sheriff shall serve or execute the same.

2. *And be it further enacted*, That whenever it shall be the opinion of the court, that the party praying a continuance shall not obtain it without payment of all costs attending the same, the whole of these costs shall be paid before the continuance is granted; and the party praying such costs shall not be entitled to recover them, although the judgment of the court should finally be in his favour.

Continuance.

[See 1785, c. 233, s. 3.]

3. *And be it further enacted*, That if any clerk shall during the sitting of the court whereof he is clerk, demand other or greater fees than by this act allowed, the court shall immediately on complaint being made thereof, determine what fee or fees shall be paid to the said clerk by the party complaining.

Clerk's fees.

4. And whereas great injustice is done to witnesses appearing in behalf of the state, by their having no allowance for their attendance at the superior and county courts as such; *Be it therefore enacted*, That from the passing of this act such witnesses shall be allowed the same pay for their daily attendance as is allowed to witnesses attending upon civil prosecutions, and such fees for attendance shall be paid by the defendant, upon conviction; and if the state shall fail upon the prosecution of any offence of an inferior nature, the court may at their discretion order the costs to be paid by the prosecutor, in case such prosecutor shall appear to have been frivolous or malicious; and in case the defendant shall not be able to pay costs, or the court shall not think fit to order the prosecutor to pay the same, that then, and in that case, the clerk of the superior and county courts shall grant a certificate of attendance to such witnesses, in manner as tickets are directed to be granted to witnesses in civil causes; and such tickets may be received by the sheriffs in payment of public dues.

[Repealed by 1800, c. 558.]

Witnesses for the state allowed fees.

CHAP. 139.

An act to carry into effect an act, passed at Newbern in November, in the year one thousand seven hundred and seventy-seven, entitled, an act for confiscating the property of all such persons as are inimical to the United States; and of such persons as shall not, within a certain time therein mentioned, appear, and submit to the state whether they shall be received as citizens thereof; and of such persons who shall so appear, and shall not be admitted as citizens, and for other purposes therein mentioned; and for other purposes. (a)

a [The act referred to is omitted as unnecessary.]

See post. c. 153.

1. WHEREAS it is enacted by the act aforesaid, passed at Newbern in November, one thousand seven hundred and seventy-seven, That all the lands, tenements, hereditaments and moveable property within this state, and all and every right, title and interest therein, of which any person was seized or possessed, or to which any person had title, on the fourth day of July, in the year one thousand seven hundred and seventy-six, who on the said day was absent from this state, and every part of the United States, and who still is absent from the same; or who hath at any time during the present war attached himself to, or aided or abetted the enemies of the United States, or who has withdrawn himself from this or any of the United States after the day aforesaid, and still resides beyond the limits of the United States, shall and are hereby declared to be confiscated to the use of this state; unless such person shall, at the next general assembly which shall be held after the first day of October, in the year one thousand seven hundred and seventy-eight, appear, and be by the said assembly admitted to the privilege of a citizen of this state, and restored to the possessions and property which to him once belonged within the same. And whereas many persons who come within the descriptions of the aforesaid act recited, or some one of them, have failed or neglected to appear before the general assembly during the present session, and submit to the state whether they shall be admitted as citizens thereof, and restored to the possessions which to them once belonged; whereby all such persons have clearly incurred, and are become liable to, the penalties of the aforesaid act:

Estates confiscated.

2 *Be it therefore enacted, &c.* That all the lands, tenements, hereditaments, and moveable property within this state, and all and every right, title, and interest therein, of every person and persons, who come within or are included by the descriptions in the aforesaid act, or either of them, shall be, and are hereby declared to be forfeited

to the state, and shall be vested in the same, for the uses and purposes herein after mentioned, and for no other purpose whatsoever.

3. *And be it enacted*, That three commissioners shall be appointed by the county court in each county, who shall give bond, with three or more sureties, in the sum of two hundred and fifty thousand pounds, to the governor for the time being, for the use of the state, for the faithful discharge of their duty, according to law ; and shall also take the oath of allegiance, and the following oath, previous to entering on their office :

I, A. B. do swear, that I will faithfully discharge the trust reposed in me as a commissioner, to the best of my knowledge, according to law ; and that I will fully account for all money or effects that shall come to my hands in consequence of my appointment as the law directs. So help me God.

And the said commissioners, or a majority of them, in their respective counties, shall have full power and authority to take possession of all lands, tenements, hereditaments, and moveable property, in the name and for the use of the state, which by this act are declared to be forfeited to the state, and shall give receipts or discharges, which shall forever indemnify and acquit the persons delivering or paying the same, their heirs, executors and administrators, against any future claim for the articles or money mentioned in such receipts or discharges.

4. And in order to discover all property, real and personal, by this act declared to be forfeited ; *Be it enacted*, That the said commissioners, or any two of them, shall and may order the several constables to summon all the inhabitants in their respective counties, to appear before them at convenient times and places. to give in, on oath, an account of such forfeited property ; when they, or a majority of them, being present, shall administer the following oath or affirmation to the inhabitants so appearing :

I, A. B. do swear, or affirm, that this account by me rendered, contains a full and true account, to the best of my knowledge, of all the lands, tenements, hereditaments, and moveable property, in the county of _____ which belonged on the fourth day of July, one thousand

seven hundred and seventy-six, or at any time since, to any person or persons who come within, or are included by the descriptions, or either of them, recited in the confiscation act, passed at Newbern in November, one thousand seven hundred and seventy-seven; and farther that the said account contains, to the best of my recollection, the full amount of all and every sum and sums of money which now are by me, due and owing to any such person or persons, including interest (if any) by bond, note or account, or by virtue of any trust whatever. *So help me God.*

And if any person summoned as aforesaid shall fail to appear, or appearing, shall fail to render an account as above mentioned, on oath or affirmation, as the case may be, in such case the said commissioners, or any two of them, shall have power to commit such person, if present, to close gaol, until he or she shall comply with the law; and if absent, shall issue a warrant, directed to any sheriff or constable, to apprehend and bring such absent person before them, at any place on a future day, when if he or she shall refuse to render an account on oath as aforesaid, he or she shall also be committed to close gaol, until he or she shall render an account on oath or affirmation as aforesaid; and the said commissioners are hereby invested with power to administer the oath, issue warrants, and make commitments, in manner aforesaid.

Commissioners
to account with
the court.

5. *And be it enacted*, That the county courts shall have the same powers to require and compel the oath aforesaid from the commissioners themselves, which the commissioners have respecting others; and the commissioners shall account for any money, or other effects, declared forfeited by this act, due by them, or in their possession, in the same manner as in other cases.

Commissioners
to have books
for their pro-
ceedings.

6. *And be it further enacted*, That the said commissioners shall enter in a book to be kept for the purpose, all lands, tenements, hereditaments, and moveable property, forfeited by this act, which shall come to their knowledge or possession, in their respective counties, together with the names of the former owners, and also whether the same, or any part thereof, be claimed by any subject of this state, or any of the United States, and shall specify all sums of money due and owing by the inhabitants thereof in manner above mentioned, together with the names of the former creditors, and the names of the

persons from whom the same are or shall be due, and whether the same be due by bond, note or otherwise; and shall make report of their proceedings to every county court which shall be held in their counties respectively: And the several county courts shall have power to remove such commissioners, and appoint others if necessary, and also to fill vacancies, occasioned by death, or removal out of the county of any commissioner; and the said county courts shall and may order the commissioners to rent such lands, tenements and hereditaments in such quantities, and for such terms, as they shall think best, so that no tract exceeds six hundred and forty acres, and no term one year, taking bond in the name of the governor for the time being, for the use and benefit of the state; and the said courts shall order all negroes, or other personal property, forfeited by this act, to be sold at public auction, and at such times and places as the said court shall think proper, and the commissioners shall thereupon proceed accordingly; and all contracts and sales made by such commissioners, agreeable to the directions of the said county courts, and of this act, shall be, and they are hereby declared good and valid, to all intents and purposes. *Provided nevertheless,* That the wife, child or children, of such absentee or absentees, now in or under the protection of this state, or the United States, shall be allowed so much of the estate of such absentee, as such wife, child or children might have enjoyed, and have been allowed, if such absentee had died intestate in this state or any of the United States.

Removable by
the court, &c.

Lands rented,
&c.

Proviso, for the
wife, &c.

7. *Provided,* That if it shall appear to any county court that any person, being a subject of this state, or of any of the United States, has, or pretends to have, any right or title in law, to any lands, tenements and hereditaments, or moveable property, declared forfeited by this act, such court shall stay all further proceedings of the commissioners thereupon, and shall send up a true and exact state of such claim to the superior court of the district, which superior court shall proceed to enquire into and determine the legal right and title of the person so claiming, by jury, in the same manner as in suits at common law, and such determination when had shall be final; and the clerk of the superior court shall transmit a copy thereof to the county court wherein the dispute

Right of appeal.

originated, which shall proceed according to such determination.

Proviso, for orphans.

8. *Provided also*, That if any real or personal estate, belonging to any orphan or other person, not comprehended or included by the descriptions in the act aforementioned, or either of them, shall be sold by virtue of this act, such orphan or other person, notwithstanding he, she or they shall have failed or neglected to exhibit such claim to the county court previous to the sale, shall, on due and sufficient proof made before the general assembly, be entitled to receive the whole amount of the sales, with six per cent. interest thereon.

For creditors.

9. *And provided likewise*, That all persons being subjects of this state, or of any of the United States, and having just claims or demands against any estate or estates declared forfeited by this act, and actually sold or converted to the use of the state in consequence thereof, shall, upon due proof made before the general assembly, be entitled to receive their several demands, if the sales or uses be sufficient; but if not, shall receive in proportion to their several demands.

Commissioner's power, & commissions.

10. *And be it further enacted*, That the commissioners in their respective counties shall have the same powers and authorities to demand, make distress for, and receive all sums of money due and owing by the inhabitants thereof, and declared forfeited to the state by this act; and shall be subject to the same pains, penalties and restrictions, and shall account with the public treasurers for the same, and also for all money arising from rents of land, hire of negroes, or sale of perishable property, at the same times, and in the same manner, as sheriffs or county treasurers have or are liable to by law for the collecting and accounting for public taxes: and shall have and receive for their services at the rate of two per cent. each.

Proviso, for debts due from forfeited estates.

11. *And provided also*, That if any subject of this state, or of any of the United States, has any demand against any person subject to the penalties of this act, and such person has not personal estate sufficient to satisfy such debt or demand, that then so much of the real estate of such person shall be sold as will be sufficient to satisfy and discharge such debt or debts; and the county courts respectively are hereby authorised to examine into any such claims, and to order juries to try the same,

and to award judgment and execution as the case may require.

12. *And be it enacted*, That all entries already made, or which shall hereafter be made, of any lands, tenements or hereditaments, which come within the meaning of the confiscation act, passed at Newbern in November, in the year one thousand seven hundred and seventy-seven, or of this act, shall be utterly void and of none effect. *Provided*, That nothing contained in this act shall be construed to invalidate or repeal any part of an act passed during this present session of the general assembly, entitled, an act to enable the inhabitants of a tract of land lying in Mecklenberg county, known by the name of governor Dobbs's tract, No. five, to make entries thereof, and obtain titles for the same.

Entries of lands void.

13. *And be it further enacted*, That the clerk of each and every county court shall transmit to the general assembly, a complete transcript of the report or reports of the commissioners in their respective counties, and of the proceedings of such courts thereupon, under the penalty of five hundred pounds; to be recovered by action of debt, in the name of the governor for the time being, and applied to the use of the state.

Clerks to transmit commissioners' reports.

14. And whereas many persons who heretofore refused to take the oath of allegiance to this state, and were compelled to leave the same in consequence thereof, by virtue of an act of assembly, passed at Newbern in April, in the year one thousand seven hundred and seventy-seven, entitled, an act for declaring what crimes and practices against the state shall be treason, and what shall be misprision of treason, and providing punishments adequate to crimes of both classes, and for preventing the dangers which may arise from persons disaffected to the state; and of another act, passed at Newbern in November, in the year one thousand seven hundred and seventy-seven, to amend the aforesaid act; have failed or neglected to appoint lawful agents or attornies to receive and give discharges for debts due and owing by the inhabitants of this state to persons who so departed therefrom, whereby many honest and well meaning people are defeated of an opportunity to discharge such debts; *Be it therefore further enacted*, That the said commissioners, or either of them, in their respective counties, shall have full power and authority to receive and give discharges for all such debts as the inhabitants thereof shall voluntarily offer to

Proceedings for dues to absentees.

pay ; and such discharges shall forever indemnify the persons paying the same against him, her or them, to whom the same were due, to the amount specified in such discharges : and the said commissioners shall return a separate account of their proceedings herein to every county court, specifying the creditor's name, that of the person paying the debt (whether due by bond, note or account) the amount thereof, and shall be liable to the same pains, penalties and restrictions, for faithfully accounting for and paying the same, as herein before provided in other cases.

Provision for indigent fathers, &c.

15. And whereas it may happen that many absentees from the state may have left fathers or mothers in an advanced age, and whose sole dependence for their subsistence has been upon the property and filial attention of their children ; and unless some provision is made to allot some part of the property of such absentees to the support of such aged, indigent persons, they must be reduced to the most abject wretchedness ; *Be it therefore enacted*, That when such indigent person, father or mother, shall make application to the superior court of the district where such person shall reside, such superior court is hereby empowered to set off and allot to such aged parent such part or portion of the estate of the absentee as such aged person hath heretofore been accustomed to receive and enjoy, and as much more as shall be necessary for the subsistence of such aged or infirm parent ; such allowance to invest only an estate for the life of such aged or infirm parent.

CHAP. 140.

See 1777, c. 114, and acts there referred to.

An act to amend an act, entitled, an act to amend an act for establishing offices for receiving entries of claims for lands in the several counties within this state, for ascertaining the method of obtaining titles to the same, and for other purposes therein mentioned.

1. WHEREAS it is enacted and provided by the act before mentioned, passed at Newbern in November, one thousand seven hundred and seventy-seven, that every person and persons, and his or their heirs or assigns, who in the office of the late earl Granville, or in the late public land-office, have heretofore made any entry or entries, or who since the death of the said earl Granville have possessed, and actually improved, any vacant or unappropriated land, for which no just claim by entry in any of-

lice shall have been made, shall be entitled in preference to all others, to enter or obtain a grant or grants for the same, so that such entry or entries be made on or before the first day of January, one thousand seven hundred and seventy-nine: and whereas doubts, difficulties and injustice have frequently arisen in consequence of the aforesaid provision: for remedy whereof,

2. *Be it enacted*, That from and after the passing of this act, in the trial of any dispute which has already arisen, and remains undetermined, or which may hereafter arise, for preference of entering and obtaining a grant for unappropriated land, if it shall appear that any person hath seated himself on lands within the bounds of any former entry or survey, and for which no grant was ever obtained, and hath improved and continued in peaceable possession of the same, by himself, or some person for him, for seven years, without interruption by or from the person claiming, or declaration of right to the person so possessed under such entry or survey, in such case, the person claiming under such former entry or survey shall be forever barred of his right of entry of the land in question, and the preference shall be given to him who settled on, and continued in peaceable possession of the same, his heirs or assigns; any law to the contrary notwithstanding.

Preference to peaceable possessors.

3. And in order to explain what shall be considered as an improvement of land, *Be it enacted*, That no person shall hereafter be entitled to any preference of entering or obtaining a grant for unappropriated land, under pretence of improvement thereof, unless it shall appear upon trial that such claimant had, previous to his application for entry, erected a house thereon, or cleared, enclosed, and cultivated a part thereof.

Improvements.

4. *And be it further enacted*, That if any person shall think himself aggrieved or injured by the determination of any county court, in any future trial respecting vacant or unappropriated lands, such person shall have a right to appeal to the superior court of the district wherein such lands lie, and such county court is hereby authorised and directed to grant such appeal, and transmit the proceedings to such superior court, the appellant first giving bond and security to prosecute such appeal with effect.

Right of appeal.
[See post. c. 155, s. 1—1807, c. 720.]

5. And for the better ascertaining the power, and directing the duty of surveyors, *Be it enacted*, That it shall and may be lawful for each and every surveyor in this

Deputy Surveyors.

state, in his respective county, to appoint a deputy or deputies, who shall previous to entering on the execution of his or their office, be qualified in a similar manner with the surveyor; and the surveyor making such appointment shall be liable and accountable for the conduct of such deputy or deputies, in the same manner as for his own conduct in office.

When bounds intersect.

6. *And be it further enacted*, That where it shall happen that the bounds of two or more entries join or intersect each other, the surveyor shall, and he is hereby required to survey such entries in turn, the eldest being first surveyed, provided such entry be not caveated; but when that shall be the case, it shall not be lawful for the surveyor to survey either of the entries so joining or intersecting each other, until a final determination be had on such caveat.

Surveys when returned.

7. *And be it enacted*, That every surveyor in this state shall, and he is hereby required to return all warrants of surveys to him directed according to law, within twelve months after receiving the same, under the penalty of one hundred pounds for every default; to be recovered by action of debt, by any person suing for the same, before any jurisdiction having cognizance thereof, and applied to his own use.

Repealing clause.

8. *And be it enacted*, That so much of the act passed at Newbern in November, one thousand seven hundred and seventy-seven, for establishing offices for receiving entries of claims for lands in the several counties within this state, for ascertaining the method of obtaining titles to the same, and for other purposes therein mentioned; and of the act passed at Newbern in April, one thousand seven hundred and seventy-eight, to amend the aforesaid act; as comes within the purview of this act, shall be, and are hereby repealed.

CHAP. 141.

[See 1780, c. 166.]

An act to prescribe the affirmation (a) of allegiance and fidelity to this state to be taken by the *unitas fratrum*, or moravians, quakers, menonists, and dunkards, and granting them certain indulgencies therein mentioned, and other purposes.

Moravians, &c. may enter lands on taking the affirmation of allegiance.

1. *Be it enacted*, That all and every of the said people, *to wit*, *unitas fratrum*, or moravians, quakers, menonists and

a [The affirmation of allegiance has been altered and is unnecessary to be retained here.]

darkards, upon taking and subscribing the affirmation of allegiance and fidelity to this state as aforesaid, before the entry-taker of the county, may re-enter all their lands formerly made in earl Granville's office, or public land-office, or any lands they, or either of them, have had the prior occupancy of, or may enter a caveat or claim against any person or persons who may have entered or surveyed the same, provided such entry, caveat or claim, be made at or before the first day of May next after the passing of this act; and shall be entitled in preference of all others to obtain a grant for the same, according to the rules of the act of assembly for establishing offices for receiving entries of claims for lands, &c. [Obsolete.]

CHAP. 142.

An act to prevent the stealing of slaves, or by violence, seduction or any other means, taking or conveying away any slave or slaves the property of another, and for other purposes therein mentioned.

1. WHEREAS it is necessary that the pernicious practice of stealing, or otherwise carrying away slaves, the property of others, as also of stealing and carrying off free negroes and mulattoes, with an intention to sell and appropriate the same, should be discouraged by a law with additional penalties:

2. *Be it therefore enacted, &c.* That any person or persons who shall hereafter steal, or shall by violence, seduction or any other means, take or convey away any slave (a) or slaves the property of another, with an intention to sell or dispose of to another, or appropriate to their own use, such slave or slaves, or who shall hereafter by violence, or any other means, take or convey any free negro or free negroes, or persons of mixed blood, out of this state to another, with an intention to sell or dispose of such free negro or free negroes, or persons of mixed blood, and being thereof legally convicted, or shall upon his arraignment peremptorily challenge more than thirty-five jurors, or shall stand mute, shall be judged guilty of felony, and shall suffer death without benefit of Clergy.

Penalty for stealing slaves.

a [Stealing or selling free negroes or mulattoes punishable by fine and imprisonment, 1800. c. 562.]

3. *And be it further enacted,* That the clerk of every county court of this state shall, on the third day of every court, read this act in the presence and hearing of the county court, under the penalty of five pounds for every default.

Act to be read by the clerk.

When to take place.

4. *And be it further enacted*, That this law shall take effect and be binding upon the subjects of this state, on the first day of April next, and afterwards, and not sooner.

Repealing clause.

5. *And be it further enacted*, That so much of an act of assembly of this state, entitled, An act concerning servants and slaves, as comes within the purview of this act, is hereby repealed, and declared to be void and of no effect, to all intents and purposes whatsoever.

CHAP. 143.

[See 1777, c. 109—1788, c. 289.]

An act for apprehending and selling certain slaves set free contrary to law, and for confirming the sales of others, and for other purposes.

1. WHEREAS by an act, entitled, An act to prevent domestic insurrections, and for other purposes, it is provided that no person shall liberate his or her slave except for meritorious services, to be judged of and allowed by the county court; and by the said act it is directed in what manner, and for what purposes, such liberated slaves shall be apprehended and sold: And whereas before the passing of the said act, and since the sixteenth day of April, one thousand seven hundred and seventy-five, divers evil-minded persons, intending to disturb the public peace, did liberate and set free their slaves, notwithstanding the same was expressly contrary to the laws of this state; and the county courts of Perquimans and Pasquotank, conceiving they had power to proceed against all such liberated slaves, did order them to be sold to the highest bidder: And whereas doubts have now arisen, whether the purchasers of such slaves have a good and legal title thereto: For remedy whereof,

Sales of slaves confirmed.

2. *Be it enacted*, That all such sales, made *bona fide*, and for valuable consideration, shall be deemed good and valid, to all intents and purposes.

Proceedings against those liberated,

3. And as many negroes are now going at large, to the terror of the good people of this state, who were liberated in manner aforesaid previous to the passing of the said recited act; *Be it further enacted*, That the same proceeding shall and may be had against all such illegally liberated slaves, as is directed in the said recited act, entitled, An act to prevent domestic insurrections, and for other purposes, in the same manner as if such negro slaves had been set free after the passing of the same.

Provided, That nothing herein contained shall deprive of liberty any slave, who having been liberated, and not sold by order of any court, has enlisted into the service of this or the United States previous to the passing of this act.

CHAP. 144.

An act for extending the boundary line between this state and the commonwealth of Virginia. [See 1780, c. 169— 1781, c. 171 1782, c. 181.]

WHEREAS the inhabitants of this state, and those of the commonwealth of Virginia, have settled themselves farther westwardly than the boundary between the said two states hath hitherto been extended; and it becomes expedient, in order to prevent disputes among such settlers, that the same should be now further extended and marked;

2. *Be it therefore enacted, &c.* That Oroondates Davis, John Williams (Caswell,) James Kerr, William Bailey Smith, and Richard Henderson, or any three of them, be, and they are hereby appointed commissioners, with full power and authority to meet with other commissioners from the commonwealth of Virginia, and to proceed to extend and mark the line between that commonwealth and this state, beginning where Joshua Fry and Peter Jefferson, commissioners on the part of Virginia, together with Daniel Weldon and William Churton, from North Carolina, formerly appointed to run the said line, ended their work; and if that be found to be truly in the latitude of thirty-six degrees thirty minutes north, then to run from thence due west to Tennessee or the Ohio river; or if it be found not truly in the said latitude, then to run from the said place due north or due south, into the said latitude, and thence due west to the said Tennessee or Ohio river, correcting the said course at due intervals by astronomical observations. If either of the commissioners by this act appointed shall decline, or be unable to go through the duties of his appointment, the governor and council shall appoint some other to act in his stead. The said commissioners shall nominate such skilful surveyor to execute their directions, and such other attendants as shall be necessary; and shall endeavor to procure the most accurate instruments, which if injured in the said service, shall be made good at the pub-

lic expense, or wholly paid for, at the election of the proprietor, if borrowed from an individual ; or of such other person or persons as shall have authority to make such election, if borrowed from any seminary of learning. Each commissioner shall be allowed for his trouble here in ten dollars per day, for every day he shall attend ; each surveyor, with the chain carriers, and other attendants, shall be allowed such sums as the commissioners shall certify they respectively ought to receive, and be paid by either treasurers of this state out of any public monies in their hands, together with allowance to the commissioners as aforesaid ; and the said commissioners are hereby directed to make report of their proceedings to the general assembly.

CHAP. 145.

An act for dividing Craven county into two distinct counties, and for other purposes therein mentioned.

1. WHEREAS the large extent of the county of Craven renders the attendance of the inhabitants of the extreme parts thereof at the court-house, to perform public duties, difficult and expensive : For remedy whereof,

Jones county
established.

2. *Be it enacted, &c.* That from and after the passing of this act, the said county of Craven shall be divided into two distinct counties, by a line beginning at that part of Carteret line which lies directly south from the head of Reedy branch, running thence to the head of the said branch, and so down the meanders of the same to Trent river ; thence up Trent river to the mouth of Deep-Gully branch, to Dover or Bachelor desert ; thence up Dover or Bachelor desert, to the plantation of Thomas Kent ; thence a direct course to the South-West bridge, at Dobbs county line ; and that all that part of the said county of Craven which lies above or westwardly of the said dividing line, shall be established a new and distinct county, by the name of Jones.

CHAP. 146.

An act for dividing Bute county into two distinct counties, and for other purposes therein mentioned.

1. WHEREAS the large extent of the county of Bute renders the attendance of the inhabitants on the extreme

parts of the said county to do public duties extremely difficult and expensive: For remedy whereof,

2. *Be it enacted, &c.* That from and after the passing of this act, the county of Bute shall be divided into two distinct counties, by a direct line from the Granville line to Halifax or Nash county line, as the case may be, leaving in each part or division an equal quantity of acres as near as can be ascertained. Bute divided.

3. And in order that the same may be ascertained with as much precision as possible, *Be it further enacted,* That Julius Nichols, William Duke, John Falcon, John Norwood, and Matthew Thomas, or a majority of them, be, and they are hereby appointed commissioners, to measure the lines of said county on every side, and to run the dividing line so as to make each respective division as convenient to the respective persons residing therein as possible, which said line when run by the commissioners, or a majority of them, shall be entered on the record of each county; and all that part or division which lies north of said line, and adjacent to Virginia, shall be a distinct county, by the name of Warren; and all that part or division that lies south of said line shall be a distinct county, by the name of Franklin. Warren and Franklin counties erected.

CHAP. 147.

An act for dividing Hertford county, and other purposes therein mentioned.

1. WHEREAS by reason of the width of Chowan river, and the difficulty of passing the same, especially in boisterous weather, it is extremely inconvenient for the inhabitants of the north-east side of the said river to attend courts, and other public business, as also for the ease and convenience of the inhabitants on the north ends of Chowan and Perquimans counties, it is necessary that the same be divided into a separate and distinct county:

2. *Be it therefore enacted, &c.* That all that part of Hertford county that lies on the north side of Chowan river, and all that part of Chowan and Perquimans counties that lies on the north side of Catharine and Warwick creeks, and bounded as follows, *that is to say*, beginning at the Virginia line, on Chowan river; thence down the said river, to the mouth of Catharine creek; thence up the said creek, to the mouth of Warwick creek; thence up Gates erected.

said creek, to the head; thence a direct line to the head of the Indian branch, in Perquimans county; thence down said branch, to the great Dismal Swamp; thence a north-east course to the Virginia line; thence westwardly along said line, to the beginning; and all that part of Hertford, Chowan and Perquimans counties, included in said lines, shall be, and is hereby established a county, by the name of Gates.

CHAP. 148.

An act for dividing the county of Anson into two distinct counties, and other purposes therein mentioned.

1. WHEREAS the large extent of the county of Anson renders it grievous and troublesome to many of the inhabitants thereof to attend the courts, general elections, and other public meetings appointed therein;

Montgomery erected.

2. *Be it therefore enacted, &c.* That from and after the passing of this act, the said county of Anson be divided by the road leading from Munro's bridge, on Drowning creek, to Colson's ferry, to a point opposite the mouth of Rocky river; thence running a direct line, crossing Pee Dee river, to the mouth of Rocky river; thence up the various courses of Rocky river, to the dividing line between the counties of Anson and Mecklenberg; and that all that part of the said county of Anson which lies to the north of the said dividing line shall be erected into a new and distinct county, by the name of Montgomery.

CHAP. 149.

An act for dividing the county of Guilford into two distinct counties and other purposes therein mentioned.

1. WHEREAS the large extent of the county of Guilford renders it grievous and troublesome to many of the inhabitants thereof to attend the courts, general musters, elections, and other public meetings:

Guilford county divided.

2. *Be it therefore enacted, &c.* That from and after the passing of this act, the said county of Guilford be divided into two separate and distinct counties, beginning on the Anson line, at the corner of Rowan; thence running north twenty-eight miles; then east, to the Orange line; and all that part of the said county of Guilford that lies

Randolph erected.

south of the aforesaid line, shall continue to remain a distinct and separate county, by the name of Randolph.

CHAP. 150.

An act for dividing Tryon county into two distinct counties, by the names of Lincoln and Rutherford, and for other purposes therein mentioned.

1. WHEREAS the large extent of the county of Tryon renders the attendance of the inhabitants on the extreme parts of the said county to do public duties extremely difficult and expensive : For remedy whereof,

2. *Be it enacted, &c.* That from and after the passing of this act, the county of Tryon shall be divided into two distinct counties, by a line beginning at the south line near Broad river, on the dividing ridge between Buffalo creek and Little Broad river, thence along the said ridge to the line of Burke county, thence along the said line to the old Cherokee line, thence a due west course to the top of a dividing ridge between the eastern and western waters, thence along the said ridge to the old line claimed by South-Carolina ; and all that part of the said county which lies on the east side of the said line shall be called and known by the name of Lincoln county, and all that part of the county which lies on the other or west side thereof, shall be called and known by the name of Rutherford county.

Tryon county
divided.

Lincoln and
Rutherford c-
rected.

CHAP. 151.

An act for annexing part of Halifax county to Edgecomb, and other purposes.

1. WHEREAS the lower corner of Halifax county that lies next to Fishing creek, is much more convenient to the public buildings of Edgecomb county than to those of Halifax : For remedy whereof,

2. *Be it enacted,* That from and after the passing of this act, all that part of Halifax county lying below a line beginning at John Wall's and Drewry Croker's dividing corner tree on Fishing creek, then along said Wall's line to the back corner, thence a direct line as near as may be to the fork of the Marsh swamp at or near Matthew Packer's, then down said swamp to Deep creek, and across said creek to the mouth of the Indian

County lines.

branch, then the various courses of said branch to the Martin county line, shall be held and deemed part of the county of Edgcomb, and the inhabitants thereof shall be under the same rules and restrictions, as the other inhabitants of Edgcomb are.

3. And whereas several of the inhabitants of that part of Halifax county, that by this act is annexed to Edgcomb, have entered land in the entry office of Halifax :

Land surveyed.

4. *Be it therefore enacted*, That where any person shall have entered land as aforesaid, the entry-taker of the county of Halifax is hereby empowered and directed to make out warrants and orders of survey and direct them to the surveyor of Edgcomb county, which said surveyor is hereby ordered and empowered to survey said land, to take the same fees, and make the same transmittance thereof, as if the same had been entered in the entry office of Edgcomb.

5. And whereas that part of the dividing line between the counties of Edgcomb and Pitt, on the north side of Tar river (as by law directed,) has never been run ;

County lines.

6. *Be it therefore enacted*, That Jacob Little, Amos Adkinson and Charles Walderson are appointed commissioners, and they are hereby empowered and directed to run said line, beginning on Martin county line as near as they conveniently can in a direct course between the dwelling-house of William Jackson and the mouth of Checks run on Tar river, thence a strait course to the mouth of said Checks run on said river ; which line when run by the commissioners or a majority of them, agreeable to the directions of this act, shall be by them entered on record in each of the counties of Edgcomb and Pitt.

Read three times, and ratified in General Assembly, }
the twelfth day of February, A. D. 1779. }

SIGNED BY

ALLEN JONES, S. S.

THOMAS BENBURY, S. C.

At a General Assembly, begun and held at Smithfield, on the third day of May, in the year of our Lord one thousand seven hundred and seventy-nine, and in the third year of the independence of the said state: Being the first session of this Assembly. Richard Caswell, Esq. governor.

CHAP. 152.

An act for amending an act for making provision for the poor and for other purposes. [See 1777, c. 117.]

1. And whereas by an act, entitled, An act concerning servants and slaves, it is enacted, That no slave shall be permitted on any pretence whatsoever, to raise any horses, cattle, hogs or sheep; *Be it therefore enacted*, That all horses, cattle, hogs or sheep, that, one month after the passing this act, shall belong to any slave, or be of any slave's mark, in this state, shall be seized and sold by the county wardens, and by them applied, the one half to the support of the poor of the county, and the other half to the informer.

Slaves not to raise stock.

2. *And be it further enacted*, That when any citizen of this state is absent on service as a militia man, and is thereby rendered incapable of labor, or whose family is unable to support themselves during his absence or inability, the court of overseers to which he belongs, on application, shall make him or them such allowance as they think reasonable out of their tax, towards the maintenance and support of such man or family, and an account of such expenditures shall be allowed in their settlement with the county.

Provision for indigent persons in service of the state.

3. *And be it further enacted*, That so much of the above recited act as comes within the purview of this, is hereby repealed and made void.

Repealing clause.

Read three times, and ratified in General Assembly, the tenth day of May, 1779.

SIGNED BY

ALLEN JONES, S. S.

THOMAS BENBURY, S. C.

Richard Cas-
well, Esq. go-
vernor.

At a General Assembly begun and held at Halifax, on the eighteenth day of October, in the year of our Lord one thousand seven hundred and seventy-nine, and in the fourth year of the independence of the said state: Being the second session of this Assembly.

CHAP. 153.

An act to carry into effect an act passed at Newbern, in November, in the year one thousand seven hundred and seventy-seven, entitled, An act for confiscating the property of all such persons as are inimical to this or the United States, and of such persons as shall not within a certain time therein mentioned appear and submit to the state whether they shall be received as citizens thereof, and of such persons who shall so appear and shall not be admitted as citizens, and for other purposes therein-mentioned; and for other purposes. (a)

a [The act referred to is omitted as unnecessary.]

[See ante. c.
139.]

1. WHEREAS it is enacted by the act aforesaid, passed at Newbern, in November, one thousand seven hundred and seventy-seven, that all the lands, tenements, hereditaments, and moveable property, within this state, and all and every right, title and interest therein, of which any person was seized or possessed, or to which any person had title, on the fourth day of July, in the year one thousand seven hundred and seventy-six, who on the said day was absent from this state, and every part of the United States, or who has withdrawn himself from this or any of the United States, after the day aforesaid, and still resides beyond the limits of the United States, shall and are hereby declared to be confiscated to the use of this state, unless such person shall, at the then next general assembly which shall be held after the first day of October, in the year one thousand seven hundred and seventy-eight, appear, and be admitted to the privilege of a citizen of this state, and restored to the possessions and property which to him once belonged within the same: And whereas divers persons, who come within the descriptions of the aforesaid act recited, have failed or neglected to appear before the said general assembly as last mentioned, or at any general assembly since, and submit to the state whether they shall be admitted as citizens thereof, and restored to the possessions which to them once belonged, whereby such certain persons herein after mentioned have clearly incurred and become liable to the penalties of the aforesaid first recited act:

2. *Be it therefore enacted*, That all the lands, tenements, hereditaments, and personal property within this state, of William Tryon and Josiah Martin Esquires, Sir Nathaniel Duckinfield, Henry Eustace McCulloch, Henry McCulloch, Samuel Cornell, and Edmund Fanning, Thomas Macknight, late of Currituck county, James Parker, William M·Cormack, John Dunlap, Neal Snodgrass, and John Lancaster, late of Pasquotank county, James Green, mariner, and John Alexander, late of Craven, Thomas Oldham, late of Chowan, Thomas Christie, of the Kingdom of Ireland, Frederick Gregg, late of New-Hanover, Andrew Miller, Alexander Telfair, Hugh Telfair, John Thompson, John Hamilton, Archibald Hamilton, late of Halifax, George Alston, late of Granville, Michael Wallace, John Wallace, late merchants of Virginia, William Field, John Field, junior, and Robert Turner, late of Gaillard, John Moore, late of Tryon, James Roberts, late of Surry, George Miller, late of Dobbs county, James Cotten, Walter Cunningham, Samuel Williams, late of Anson, Samuel Bryan, William Spergen, Matthias Sappinfield, late of Rowan, William M·Clellan, late of Edgcomb, Messieurs Dinwiddie, Crawford, and Company, late of Bute county, Robert Palmer, late of Beaufort, Edward Brice Dobbs, Ralph M·Nair, John M·Nair, Joseph Field, James M·Meil, Archibald M·Coy, Alexander M·Cay, Neil M·Arthur, John Leggett, John M·Cloud, Colin Shaw, William Campbell, James Gamble and Company, Thomas Rutherford, William Rose, Alexander M·Coy, Messieurs Waller and Bridgen, merchants in London, Alexander M·Auslen, late of Newbern, Alexander Campbell, Robert Bell, and Duncan Campbell, late of Granville county, Francis Williamson, late of Currituck county, Chancey Townsend, Doctor Tucker, late of Wilmington, and Buchanan, Hastie, and Company, and all others who come within the meaning of the confiscation and this act, and all and every the right, title and interest, which all or each of the persons aforesaid, may have had therein on the said fourth day of July, one thousand seven hundred and seventy-six, or at any time since, shall be, and are hereby declared to be confiscated, fully and absolutely forfeited to this state, and shall be vested in the hands of commissioners as in this act directed to be appointed, for the purposes herein after mentioned.

Estates confiscated.

3. *And be it further enacted*, That commissioners shall

Commissioners appointed.

be appointed by the county court in each county, who shall severally give bond, with three or more sureties, in the sum of one hundred thousand pounds at least, and not exceeding five hundred thousand pounds, at the discretion of the county court, to the governor, for the time being, for the use of the state, for the faithful discharge of their duty according to law; and shall also take the following oath, previous to entering on their office :

Their oath.

I, A. B. do swear, that I will faithfully discharge the trust reposed in me as a commissioner, to the best of my knowledge, according to law; and that I will fully account for all money or effects that shall come to my hands, in consequence of my appointment, as the law directs. *So help me God.*

And power.

And the said commissioners in their respective counties shall have full power and authority to take possession of all lands, tenements, hereditaments, monies, debts, whether due by judgment, bond, bill, note, account, or otherwise, and all other personal property of the persons aforesaid, in the name, and for the use of the state, which by this act are declared to be forfeited to the state, and shall give receipts or discharges, which shall forever indemnify and acquit the persons delivering or paying the same, their heirs, executors and administrators, against any future claim for the articles or money mentioned in such receipt or discharges.

Exchange of money.

4. *And be it further enacted,* That all persons who owe any sterling debt to any person or persons described in the confiscation act or in this act, whose property is thereby confiscated, shall pay in lieu of every hundred pounds sterling, the sum of one hundred and seventy-five pounds current money of North-Carolina.

Property how discovered.

5. And in order to discover all the property, real and personal, of the persons aforesaid, by this act declared to be forfeited; *Be it enacted,* That the said commissioners shall and may order the several constables to summon any of the inhabitants in their respective counties to appear before them at convenient times and places, to give in on oath an account of such forfeited property, when they, or a majority of them being present, shall administer the following oath or affirmation to the inhabitants so appearing :

I A. B. do swear or affirm, that the account by me rendered contains a full and true account, to the best of my knowledge, of all the lands, tenements, hereditaments, debts, monies, and all personal property in the county of _____ or elsewhere, which belonged on the fourth day of July, one thousand seven hundred and seventy-six, to any of the before mentioned person or persons, or at any time since, who come within, or are included by the description, or either of them, recited in this act, or the confiscation act passed at Newbern, in the year one thousand seven hundred and seventy-seven, and have not disposed of or parted with the same, or any part thereof, to elude or evade the intent and meaning of the confiscation or this act; and further, that the said account contains, to the best of my recollection, the full amount of all and every sum or sums of money which now are by me due and owing to any such person or persons, including interest (if any) by bond, note or account, or by virtue of any trust whatever. *So help me God.*

And if any person summoned as aforesaid shall fail to appear, or appearing shall fail to render an account as above mentioned, on oath or affirmation, as the case may be, in such case the said commissioners, or any two of them, shall have power to commit such person, if present, to close gaol, until he or she shall comply with the law; and if absent, shall issue a warrant, directed to any sheriff or constable, to apprehend and bring such absent person before them at any place, on a future day, when if he or she shall refuse to render an account on oath as aforesaid, he or she shall also be committed to close goal, until he or she shall render an account on oath or affirmation as aforesaid; and the said commissioners are hereby invested with power to administer the oath, issue warrants, and make commitments, in manner aforesaid.

6. *And be it further enacted,* That the county court shall have the same power to require and compel the oath afore mentioned from the commissioners themselves, which the commissioners have respecting others; and the commissioners shall account for any money, or other effects, declared forfeited by this act, due by them, or in their possession, in the same manner as in other cases.

7. *And be it further enacted,* That the said commissioners shall enter in a book to be kept for that purpose, all such lands, tenements, hereditaments, and personal

Commissioners
how account-
able.

Their duty on
selling lands, &
vacancies how
filled.

property, of the persons aforesaid, forfeited by this or any other act, which shall come to their knowledge or possession in their respective counties, together with the names of said former owners, and also whether the same, or any part thereof, be claimed by any subject of this state, or any of the United States, and shall specify all sums of money which are or shall be due or owing by any inhabitant or inhabitants within said county to any of the before mentioned persons, or his or their former creditors, together with the names of such debtor and former creditor as aforesaid, and shall make report of their proceedings to every county court which shall be held in their counties respectively ; and the several county courts shall and may have power to fill vacancies occasioned by death, refusal, or removal out of the county, provided that there shall not be less than seven justices present at the appointment of any commissioner : and the said commissioners shall, and are hereby authorised and required, to sell all and every the lands, tenements, hereditaments, and personal property, of the persons aforesaid, by way of public auction, at the court-house of the county wherein the said estate shall be, in the time of sessions, advertising the same in the Virginia and South-Carolina Gazettes one month at least previous thereto, and in the most public places of the county, in such quantities as the said commissioners shall think best, so that no tract exceed more than six hundred and forty acres, to be laid out by a surveyor for that purpose appointed by the commissioners, one half of the purchase money to be paid down to the said commissioners, and for the other half they shall take bond, with sufficient security, payable in six months, to the governor or commander in chief for the time being, for the use and benefit of the same ; and any two of the said commissioners are hereby vested with full power and authority to execute to the purchaser or purchasers as aforesaid a deed of bargain and sale or other conveyance in law, for such tract or tracts of lands purchased as aforesaid, which shall be good and valid in law to convey the fee of the same to the purchaser or purchasers, his heirs and assigns, forever ; any law to the contrary notwithstanding.

Right of appeal.

8. *Provided*, That if it shall appear to the county court that any person, being a subject of this or any of the United States, hath, or pretends to have, any right or title in law to any lands, tenements, hereditaments, monies,

debts, or personal property, of any of the said persons declared forfeited by this act, such court shall stay all further proceedings of the commissioners thereupon, and shall send up a true and exact state of such claim to the superior court of the district; which superior court shall proceed to enquire into and determine the legal right and title of the person so claiming, by jury, in the same manner as in suits of common law, and such determination when had shall be final; and the clerk of the superior court shall transmit a copy thereof to the county court wherein the dispute originated, which shall proceed according to such determination.

9. *Provided also*, That if any real or personal estate belonging to any orphan, or other person, not comprehended or included by the descriptions in the act afore mentioned, or either of them, shall be sold by virtue of this act, such orphan or other person, notwithstanding he, she or they, shall have failed or neglected to exhibit such claim to the county court previous to the sale, shall on due and sufficient proof made before the general assembly, be entitled to receive the whole amount of the sale, with six *per centum* interest thereon.

Proviso, for orphans.

10. *And provided likewise*, That all persons being subjects of this state, or of any of the United States, and having just claims or demands against any estate or estates declared forfeited by this act, and actually sold or converted to the use of the state in consequence thereof, shall upon due proof made before the general assembly, be entitled to receive their several demands, if the sales of such estate be sufficient, but if not, shall receive in proportion to their several demands.

For creditors.

11. *And be it further enacted*, That the commissioners in their respective counties shall have the same powers and authorities to demand, make distress for, and receive, all sums of money due and owing by the inhabitants thereof, and declared forfeited to the state by this act; and shall be subject to the same pains, penalties and restrictions, and shall account with the public treasurers for the same, and also for all money arising from the sales of lands, or sales of personal property, as in this act directed, at the same times, and in the same manner, as sheriffs or county treasurers have or are liable to by law for the collecting and accounting for public taxes, and shall have and receive for their services at the rate of two *per cent.* each

Commissioners the same power as sheriffs, &c.

Entries of lands
void.

12. *And be it further enacted*, That all entries already made, or which shall hereafter be made, of any lands, tenements or hereditaments, of the persons aforesaid, which come within the meaning of the confiscation act, passed at Newbern, in November, one thousand seven hundred and seventy-seven, or of this act, shall be utterly void and of none effect. *Provided*, That nothing contained in this act shall be construed to invalidate or repeal any part of an act passed during the session of general assembly at Halifax, in January and February, one thousand seven hundred and seventy-nine, entitled, an act to enable the inhabitants of a tract of land lying in Mecklenberg county, known by the name of governor Dobbs's tract, No. five, to make entries thereof, and obtain titles for the same. *Provided*, That nothing contained herein, or in the said confiscation act, shall be construed to repeal an act for establishing offices for receiving entries of claims for lands in the several counties within this state, for ascertaining the method of obtaining titles to the same, and for other purposes, or any part thereof, but that the same is and shall be in full force; and that all proceedings that have been, or shall hereafter be conducted according to the directions of the said act, as to the lands therein mentioned, are hereby declared good and valid; any law, custom or usage to the contrary notwithstanding.

Clerks to make
transcripts.

13. *And be it further enacted*, That the clerk of each and every county court shall transmit to the general assembly a complete transcript of the report or reports of the commissioners in their respective counties, and of the proceedings of such court thereupon, under the penalty of five hundred pounds; to be recovered by action of debt, in the name of the governor for the time being, to be applied to the use of the state.

Property not
bona fide dis-
posed of, con-
fiscated.

14. And whereas many persons who heretofore refused to take the oath of allegiance to this state, and were compelled to leave the same in consequence thereof, by virtue of an act of assembly, passed at Newbern, in April, in the year one thousand seven hundred and seventy-seven, entitled, An act for declaring what crimes and practices against the state shall be treason, and what shall be misprision of treason, and providing punishments adequate to crimes of both classes, and for preventing the dangers which may arise from persons disaffected to the state; and of another act, passed at Newbern, in November, in the year one thousand seven hundred and seventy-seven,

to amend the aforesaid act, have failed or neglected to sell and convey their real estates agreeable to the said act, and to appoint lawful agents or attornies to receive and give discharges for debts due and owing by the inhabitants of this state to persons who so departed therefrom, whereby many lands of the persons last described are yet undisposed of, and still continue to be and remain to the use of the same, and many well meaning people are defeated of an opportunity to discharge such debts due as aforesaid; *Be it therefore enacted*, That all such lands of the persons described in the said last recited acts, which have not been sold and disposed of *bona fide* for a valuable consideration actually paid, and all debts, money and personal property belonging to the same, not yet collected and appropriated according to the directions of said acts, shall be, and are hereby declared to be confiscated to this state, and the commissioners aforesaid are hereby directed to proceed on such real and personal estates in like manner as on the estates of the persons first mentioned in this act; any thing contained in the said last recited act to the contrary notwithstanding.

15. *And be it further enacted*, That the surveyor appointed by the commissioners to run out any of said lands, shall be entitled to receive eight pounds for each tract of six hundred and forty acres, and so in proportion for a less quantity of land they shall be ordered to run out.

Surveyor's fees.

16. *And be it further enacted*, That an act passed at Halifax, in January, one thousand seven hundred and seventy-nine, entitled. An act to carry into effect an act passed at Newbern, in the year one thousand seven hundred and seventy-seven, for confiscating the property of such persons as are inimical to this state or the United States, and of such persons as shall not within a certain time therein mentioned appear and submit to the state whether they shall be received as citizens thereof, and of such persons who shall so appear and shall not be admitted as citizens, and for other purposes therein mentioned, and for other purposes, and every clause of the said first recited act, shall be, and is hereby repealed and made void; any law to the contrary notwithstanding.

Act repealed.

17. *Provided nevertheless*, That the wife or widow of any of the persons aforesaid, who hath been, and now is residing within this state, shall not be debarred from her right of dower in and to her husband's lands, but shall be entitled to one-third thereof for and during her natu-

Right of dower.

ral life, to be laid off by the commissioners in the same manner as lands in dower are by the common law ; and that a proper subsistence out of the sales of said husband's estate shall be allowed to the wife or widow aforesaid, for the maintenance of herself, and such children, being minors, who are now residents of this state, as the generally assembly shall direct.

Provision for
aged parents,
&c.

18. *Provided nevertheless*, That nothing herein contained shall be construed to empower the commissioners, appointed by virtue of this act, to take into their possession any household furniture or provisions belonging to the aged parents, wives, children, or widows, of any person whose estate is confiscated by virtue of this or any other act passed in this state.

Former com-
missioners to ac-
count.

19. *Provided nevertheless*, That the commissioners appointed according to the directions of the aforesaid act, passed in January, one thousand seven hundred and seventy-nine, who have done, performed and executed, any of the trusts reposed in them by the said act, shall be accountable to the treasurer of the district for all such sum or sums of money by them so received, as the commissioners by this act are liable to, and required to be.

Recoveries
made good.

20. *And be it further enacted*, That if any recovery shall be had hereafter against any person for any sum or sums of money by him or her paid in consequence of this act, the state shall fully and amply, on sufficient proof made to the general assembly, pay and satisfy to such person all monies so recovered, together with all damages which may thence accrue, whether arising from delay, imprisonment, or otherwise.

CHAP. 154.

[Sec 1774, c.
103.]

An act to prevent hunting in the night-time with gun and fire-light, and other purposes therein mentioned.

Penalty on evi-
dences refusing
to give testimo-
ny.

1. *And be it enacted, &c.* That if any person summoned as any evidence against any fire hunter, and shall refuse or neglect to give evidence against such fire hunter, such person so refusing or neglecting shall be committed to the gaol of the county where the offence shall be committed, until he or she shall give evidence against the offender.

CHAP. 155.

An act to amend an act, entitled, An act for establishing offices for receiving entries of claims for lands in the several counties within this state, and for ascertaining the method of obtaining titles to the same, and for other purposes therein mentioned; and also to amend one other act, entitled, An act to amend an act for establishing offices for receiving entries of claims for lands in the several counties within this state, for ascertaining the method of obtaining titles to the same, and for other purposes therein mentioned. [See 1777, c. 114, and 1778, c. 132.]

1. *Be it enacted, &c.* That from and after the passing of this act, the several county courts within this state shall have full power and authority, and they are hereby declared to have full power and authority, in all cases now undetermined, where they shall judge a new trial necessary, to order the same either on the premises, where the bounds of the lands come in question, or before them, in which last case they shall direct a jury to be impaneled and sworn as in the trial of other causes, to try the disputed claim; and where the said jury shall find generally or specially, the same proceedings shall be had on their verdict as in cases of verdicts returned by the sheriff respecting vacant or unappropriated lands; and the judgment of the court in all cases of vacant or unappropriated land shall be final and conclusive, without any appeal (a) to the superior court. Where new trials may be had. a [Appeal lies to the superior court, 1807, c. 720.]

2. *And be it further enacted,* That the sheriff, or his deputy, shall have full power and authority, and they are hereby declared to have full power and authority, to administer an oath to the jury and witnesses, and to qualify them in the same manner as a justice of the peace, pursuant to the before recited act, passed at Newbern. Sheriff to administer an oath.

3. *And be it further enacted,* That in case of the death of any person who heretofore has made an entry of land, or who hereafter shall make an entry pending the same, or before the making out the grant, his or their heirs or assigns shall have a fee simple estate in the premises, although the grant shall be made in the name of the decedent. Titles to entries of lands.

4. And whereas in many cases after entering a caveat, the contending parties meet and agree, which agreement often cannot be ascertained, and thereby justice is delayed, and the intention of the legislature in granting land defeated; *Be it therefore enacted,* That on application to the county court where the land lies, both parties having such previous notice as the court shall judge sufficient, they shall ascertain the agreement, and give judgment Agreements ascertained.

in the same manner as on a verdict of a jury, and the like proceedings shall be had thereon. *Provided nevertheless*, That in case the agreement cannot be ascertained to the satisfaction of the court, they shall order a trial as in other cases of caveats.

Penalty on jurors.

5. And whereas there is no law to enforce the attendance of jurors on trials on the premises, and delays frequently happen in consequence of their failure; *Be it therefore enacted*, That in case any person summoned as a juror to attend on the premises, who shall fail to appear and proceed on the trial, the sheriff shall return a list of his or their names so failing to the county court next succeeding, who shall order a notice to issue for him or them, to shew cause at the next succeeding session in justification of such failure; which if the court should think not sufficient, they shall fix a fine on the said delinquent, not exceeding fifty pounds, (a) and be further liable to an action of the party grieved.

a [2l. by the scale.]

Lands how run.

6. *And be it further enacted*, That when it shall so happen that any person or persons shall have made, or hereafter may make any entry of land on any navigable water, and are prevented from running out the same, agreeable to the directions of the before recited act, by the boundary of any land heretofore run out, that then, and in that case, the surveyor may and shall run out and survey the same in the same manner that other lands are directed to be laid out; any thing in the before recited act to the contrary notwithstanding.

CHAP. 156.

b [A majority of justices present, &c. 1816, c. 901.] An act to amend an act for appointing sheriffs, and directing their duty in office, and for obliging the late sheriffs and collectors of public monies who are in arrear to account for and pay the same, and for other purposes.

Sheriffs appointed.

c [A sheriff cannot be reelected unless he has settled in full with the treasurer, county trustee, & wardens, 1806, c. 699, s. 2.]

1. *Be it enacted, &c.* That every county court (b) shall annually elect and nominate a freeholder of sufficient circumstance to execute the office of sheriff, (c) who shall thereupon be commissioned by the governor or commander in chief to execute that office for one year; and if any sheriff so nominated shall remove out of his bailiwick, or fail to give security, or refuse to qualify, or shall happen to die (d) in the time of his sheriffalty, the court

d [Or accepts an appointment under the U. S. 1798, c. 513.]

shall at the next sessions elect and nominate another as aforesaid.

2. *And be it further enacted*, That in case at any time there shall be no person properly qualified to act as sheriff in any county of this state, that then it shall and may be lawful for the coroner of such county, and he is hereby required, to execute all process, civil or criminal, lawfully issuing, or judgments, orders or sentences, of any courts within the same, until some person shall be appointed properly qualified as aforesaid to act as sheriff in said county; and such coroner shall be under the same rules and regulations, and subject to the same fines and forfeitures, as sheriffs are by law for neglect or disobedience of the duties aforesaid.

Coroners may serve precepts.

3. *And be it further enacted*, That when it shall so happen that there is not a sheriff or coroner in any of the counties of this state wherein the superior courts of law are held, that then in such case all orders or sentences of said courts shall be performed and executed by the sheriff of any county of the district to whom the judges or clerks of the said courts after term time may think proper to direct the same, with the same powers and authorities as if he had been the sheriff of the county wherein said superior court is held, under the penalty and fine of five thousand pounds, to be inflicted upon him by the superior court of the district, on indictment, for such contempt and disobedience, and to be further liable to imprisonment, at the discretion of said court; any law, usage or custom, to the contrary notwithstanding.

Where no sheriff or coroner, then any sheriff in the district may execute, &c.

4. *And be it further enacted*, That so much of the before recited act as comes within the purview or meaning of this act, be repealed, and made null and void; any law to the contrary notwithstanding.

CHAP. 157.

An act for directing the method of appointing jurors in all causes civil and criminal.

1. WHEREAS a trial by jury is one of the best securities of the rights of the people, (a) and a just decision of suits and controversies in the several courts of law within this state, depend on the integrity and capacity of jurors:

[See bill of right, s. 9 & 14, p. 42.]

2. *Be it therefore enacted, &c.* That the justices of the

Jurors appointed.

county courts within the district of each superior court of law within this state shall, and they are hereby directed, before the sitting of any superior court, to nominate forty-eight (a) freeholders to serve as jurors at such superior courts. *Provided always*, That no county court shall knowingly nominate any person to serve as a juror at two courts successively, or any person who shall have an action or suit at issue in the superior court at the term to which he shall be so nominated.

a [30, and see how appointed, 1806, c. 694, s. 1.]

Jurors to be summoned.

Fine for not attending, &c.

b [See 1783, c. 189.]

By standers summoned.

3. *And be it further enacted*, That a list of the jurors nominated shall be delivered by the clerk of each county court to the sheriff, who shall, and is hereby required to summon the persons so nominated to serve as jurors at the superior court; and if any juror so summoned shall fail to appear, he shall be fined the sum of two hundred pounds, (b) unless he can shew sufficient cause to the next court to excuse his non-appearance; which fine shall be applied to the payment of such jurors as shall attend from the said county, and thereby lessen the county tax.

4. *Provided always*, That if any of the said county courts shall fail or neglect to nominate freeholders to serve as jurors as aforesaid, or the persons so nominated shall fail to attend, it shall and may be lawful for such superior court to order and direct the sheriff to summon other freeholders of the bystanders to serve as jurors, and the persons so summoned shall be held and deemed lawful jurors. *Provided*, That such bystanders who shall be so summoned, shall and may be every day discharged; and the succeeding day, and so from day to day, during the continuance of the court, the sheriff shall summon of the bystanders so many as shall be necessary; and every person so summoned of the bystanders who shall not appear and serve as jurors, shall be fined in the sum of fifty pounds, (c) unless he can shew sufficient cause, to be approved by the court; to be applied as before directed.

c [20s. specie, 1783, c. 189, s. 4.]

Fines levied.

5. And that the fines may be applied, according to the directions of this act, *Be it further enacted*, That the fines herein imposed shall be levied by the sheriff of each respective county, wherein each person shall reside, who shall be summoned as jurors as herein directed, and shall fail to appear and serve as such; and such sheriff shall be accountable for the same to the county court of his county.

Jurors how summoned.

6. *And be it further enacted*, That the sheriff of each

respective county shall, and he is hereby required to summon the freeholders in the list to be delivered him by the clerk of the county court of his county, at least ten days before the sitting of the superior court of which such freeholders are to attend as jurors, which he may do personally, or by leaving a note or summons in writing at the dwelling-house of such freeholder so to be nominated as aforesaid.

7. *And be it further enacted*, That in all suits in the superior and county courts within this state, wherein the title or bounds of lands shall come in question, if it shall appear to the court necessary, such court may order two surveyors, one to be named by each party, to attend and run out and survey the lands in dispute, agreeable to the bounds and lines expressed in each party's titles, and make three accurate plans of such surveys, and return the same to such court; which order such surveyors are hereby required to obey, and shall be allowed fifteen dollars (*a*) each for every day they shall be travelling to and from attending the surveys, and performing the duty by this act required; which allowance shall be taxed in the bill of costs, and paid by the party cast. *Provided nevertheless*, If the parties shall agree to have but one surveyor appointed to perform such services, that then, and in such cases, the court shall order one surveyor only to attend, survey, and run out the lands in dispute; who shall return three plans, in the same manner, and be entitled to the same allowance, as he would have been entitled to if two surveyors had been appointed.

Surveys of lands where bounds disputed.

a [20s. per day for each day he shall travel and attend, 1786, c. 252, s. 1.]

8. *And be it enacted*, That the justices of the county courts shall, at the sessions of their respective courts, nominate thirty freeholders to serve as grand and petit jurors at the next ensuing court of the county, and a list thereof shall by the clerk be delivered to the sheriff of such county, who is hereby required to summon the persons therein named to attend as jurors at such courts respectively, at least five days before the sitting of such court, which said jury shall appear and give their attendance accordingly till discharged by the court; and that there may not be a default of jurors, it shall and may be lawful, during the sitting of the county court, for the sheriff, by order of such court, to summon of the bystanders other jurors, being freeholders, to serve on the petit jury from day to day, and on any day of the said

Jurors for county courts.

court, the justices may discharge those who have served the preceding day.

Penalty for non-appearance.

9. And to enforce the attendance of jurors at the said county courts, *Be it enacted*, That every person who shall hereafter be summoned in virtue of this act to appear as jurors at any county court, such person failing to appear, or to give his attendance till discharged by order of the court, shall be fined in a sum not exceeding fifty (a) pounds by the justices of the county court; to be applied towards defraying the charges of the county, and lessening the county tax, unless he shall shew sufficient cause to the next succeeding court for such failure.

a [5l. specie, 1783, c. 189, s. 2.]

Privilege.

10. *And be it further enacted*, That no sheriff or other officer, shall serve or execute any writ, or other process, on the body of any juror, during his attendance on, going to, and returning from any of the said superior or county courts: any such service shall be void, and the defendant may on motion be discharged.

Superior court juries how drawn.

11. *And be it further enacted*, That the judges of the superior courts shall direct the names of all the jurors returned from the counties of the district where such court shall be held to be wrote on scrolls of paper, which scrolls of paper shall be put into a box, and drawn out by a child under ten years of age, and the first eighteen drawn shall be a grand jury for the said court, and the residue of the names in the box shall be the names of those who shall serve as petit jurors for the said court.

How to be drawn when a ballot is required.

12. *And be it further enacted*, That when either of the parties shall require that a jury should be balloted for, that then, and in that case, the clerk shall write the names of all the petit jurors appearing on scrolls or pieces of paper, and on the issue in such suit, a child, under ten years of age, in open court, shall draw out of the said box, twelve of the said scrolls or pieces of paper, and the persons whose names shall be in the said scrolls or pieces of paper drawn as aforesaid, shall be jurors to try such issue, provided that they all do appear; and in case of defaulters, other scrolls shall be drawn, until a sufficient number shall appear to make a complete jury.

Jurors for Oyer and Terminer courts.

13. *And be it further enacted*, That when the governor or commander in chief, with advice of the council, shall think it necessary to issue a commission to the judges of the superior courts of law of this state, empowering them, or any of them, to hold a court of sessions of the

peace, oyer and terminer, and general gaol delivery, that the judge or judges empowered to hold such courts shall issue a *venire facias* to the sheriff of the county wherein such court is to be held, who is hereby required to summon forty-eight jurors, being freeholders, five days previous to the sitting of said court, to give their attendance at the same, under the same rules, regulations and penalties, as other jurors are liable to in this act directed; and in case of a *venire facias* not arriving in time to the sheriff to summon as aforesaid, or in default of the attendance of such jurors so summoned, that then the sheriff shall summon of the by-standers such other persons, being freeholders, to constitute the grand and petit jurors of the courts as aforesaid, who if they shall fail or refuse to attend, shall be subject to the same penalties as before mentioned.

CHAP. 158.

An act for punishing persons concerned in any of the several species of counterfeiting in this state. [See 1783, c. 184, and the acts there referred to.]

1. WHEREAS the laws heretofore made for preventing counterfeits are found ineffectual:

2. *Be it enacted, &c.* That if any person after the passing of this act shall by printing, writing, engraving, or any other ways or means, counterfeit, or attempt to counterfeit, any of the public bills of credit emitted by the congress of the United States, or by any congress, convention or assembly, of this state, or of any one of the United States, or any of the lottery tickets of the United States, or any certificates from the loan-offices of this state or of the United States, or either of them, or any part, word, letter, name, emblem, or device of the said bills of credit, lottery tickets, or loan-office certificates; or shall make or construct, or cause to be made or constructed, or have in possession, any die, type, or other instrument, for imitating or counterfeiting any of the said bills of credit, lottery tickets, or loan-office certificates, or any part, word, letter, emblem, or device thereof, except by authority of law, or in case where such may be seized in order to bring suspected persons to justice; or shall alter or deface any of the said bills of credit, lottery tickets, or loan-office certificates; such person or persons so offending, being thereof lawfully convicted, by

Penalty on counterfeiters.

confession or verdict, or standing mute on arraignment or trial, shall for the first offence stand in the pillory three hours, and have his right ear nailed to the pillory and cut off, and receive on his or their bare back thirty-nine lashes, and be branded with a red hot iron on the right cheek with the letter C, and on the left cheek with the letter M (which brands shall be at least one inch in length, and three-quarters of an inch in breadth) and be imprisoned at the discretion of the court before whom it shall be tried, not exceeding one year, and forfeit one half of all his or their goods and chattels, lands and tenements, whereof he or she was seized or possessed at the time the offence was committed, to the state.

On persons
passing it, &c.

3. *And be it further enacted*, That if any person or persons shall pass, or attempt to pass, any counterfeit likeness of any of the said bills of credit, lottery tickets, or loan-office certificates, and being thereof convicted, by sufficient evidence, that the same was passed, or intended to be passed, with an intention to defraud, he or she so offending shall for the first offence stand in the pillory one hour, and have one ear cut off, and receive thirty-nine lashes, well laid on, on his or her bare back, and imprisoned at the discretion of the court, and forfeit one half of his or her property to the use of this state.

Penalty for the
second offence.

4. *And be it further enacted*, That if any person or persons shall be found guilty of uttering or passing any of the aforesaid counterfeit bills of credit, lottery tickets, or loan-office certificates, for the second offence he or they shall suffer death, without benefit of clergy.

When apprehended how to
be proceeded
against.

5. *And be it further enacted*, That any person apprehended for any of the crimes afore mentioned, sufficient proof thereof being made before any justice of the peace, shall be committed or bound over as in other cases of felony.

No challenge.

6. *And be it further enacted*, That in all future trials or arraignments under this act, the defendant shall not be entitled to make any peremptory challenge, nor shall the attorney for the state, nor the defendant or his council, take exception against any of the jury called, unless good and sufficient reasons shewn to, and approved by the court.

Nor argument.

7. *And be it further enacted*, That in all trials hereafter, for any of the crimes above mentioned, neither the attorney for the state, nor the council for the defendant, shall be allowed to use any argument against or in fa-

your of the defendant, but shall and may examine and cross-examine the witnesses on both sides, leaving to the judges to state the evidences, and give a charge to the jury thereupon.

CHAP. 159.

An act to amend an act, entitled, an act to amend the staple of tobacco.
See 1777, c. 120—1787, c. 265—1789, c. 302—1794, c. 425—1817, c. 942.

1. WHEREAS for several years past, from the difficulty of procuring materials, and the advanced price of mechanical labour, most of the public warehouses in this state have become decayed, ruinous, and unrepaired, and it being at this time inexpedient to levy on the different counties wherein said ware-houses stand, a sum equivalent to the re-building or repairing the same;

2. *Be it therefore enacted*, That from and after the passing of this act, the justices in each respective county in this state, wherein public warehouses for tobacco now stand erected, shall, from court to court, as they shall deem fit and proper, regulate and ascertain what shall be paid as warehouse rent for each hogshead of tobacco by the owner or owners of the same, which shall thereafter be brought to the said warehouses; and the said justices shall and may appoint some fit person to receive said monies, who shall be accountable to them at all times for the appropriation of the same, by action of debt, before any court having cognizance thereof, wherein the inspector's books shall be proof as to the number of hogsheads received, for the whole of which such person shall be liable to answer, and shall be allowed no protection.

3. *And be it further enacted*, That the justices in such respective counties as aforesaid, shall from time to time, as occasion may require, lay out and appropriate any remaining part of the aforesaid monies in repairing or rebuilding their respective ware-houses, in such manner as they may think necessary.

4. *And be it further enacted*, That the same rules and regulations herein before contained shall be had and taken with respect to ware-houses built by private persons on their own lands, and at which a public inspection hath been heretofore held, so far as respects the ware-house rent that shall be paid for each hogshead of tobacco.

5. *And be it further enacted*, That so much of the before recited act as comes within the purview and meaning of this act, shall be repealed and made void.

CHAP. 160.

An act for regulating ordinaries, houses of entertainment, and ferries, and other purposes.

Penalty for false measures.

a [Weights and measures to be examined every 2 years by the standard keepers, 1818, c. 965.]

b [20% by the scale.]

On ferry-keepers.

c [50s. by the scale.]

Repealing clause.

1. *And be it further enacted*, That if any person or persons, from and after the passing of this act, shall sell and deliver any kind of grain, salt, or other articles, in a less measure (*a*) than the standard established by law, shall forfeit and pay for each offence the sum of five hundred pounds; (*b*) to be recovered in any court of record having cognizance thereof, to be applied to the use of the person suing for the same.

2. And whereas some persons who live at, or own public ferries in this state, have denied to keep up the same for the rates allowed them by their respective county courts: For remedy whereof, *Be it further enacted*. That if any person or persons who live at, or own public ferries in this state, shall refuse to keep up such ferry or ferries at the rates allowed them by their said county courts, every such person so offending shall for every offence forfeit and pay the sum of fifty pounds; (*c*) to be recovered by any person suing for the same, to his or her own use.

3. *And be it further enacted*, That every act and acts, and every clause and article thereof, heretofore made, within the purview and meaning of this act, is and are hereby repealed and made void, to all intents and purposes.

[*The subject of Ordinaries is provided for by subsequent acts.*]

CHAP. 161.

An act for dividing Anson county, and other purposes.

1. WHEREAS the large extent of the county of Anson, together with the difficulty of crossing the river Pee Dee, especially when waters are high, renders it grievous and troublesome to many of the inhabitants to attend the courts, general musters, elections, and other public meetings appointed therein;

2. *Be it therefore enacted, &c.* That from and after the passing of this act, the said county of Anson be divided into two separate and distinct counties, and that the river Pee Dee be the dividing line; and that all that part of Anson that lies on the south-west side of the said river

Richmond corrected.

Dec. shall be, continue and remain, a distinct county, by the name of Anson; and that all that other part of the county of Anson that lies on the north-east side of said river, shall thenceforth be erected into a new and distinct county, by the name of Richmond county.

3. *And be it further enacted*, That all entries of land lying in the said county of Richmond, which hath or hereafter shall be made with the entry-taker of Anson county, on or before the first day of December next, and shall remain unsurveyed on the day aforesaid, that it shall and may be lawful for the entry-taker of Anson county, and he is hereby directed to issue warrants for all such entries aforesaid, to the surveyor of said county of Richmond; any thing in this act to the contrary notwithstanding. Land surveyed.

CHAP. 162.

An act for the division of Dobbs county, and other purposes therein mentioned.

1. WHEREAS the large extent of the county of Dobbs renders the attendance of the inhabitants of the extreme parts thereof, at the court-house, to perform public duties difficult and expensive: For remedy whereof,

2. *Be it enacted, &c.* That from and after the passing of this act, the said county of Dobbs be divided, and that William Caswell, Charles Markland, William McKinnic, senior, Etheldred Ruffin, and Benjamin Cobb, or a majority of them, be, and they are hereby appointed commissioners for running the dividing line, who are hereby directed to run the lines of the said county of Dobbs, so that they ascertain the middle part of said county, which when discovered, they shall run a line a north and south course, through the middle part of said county; and then all that part of said county which lies eastwardly of the dividing line, shall continue and remain a distinct county, by the name of Dobbs; and that all the other part shall be a distinct county, by the name of Wayne, with the same privileges and immunities as any other county within this state. County divided.
Wayne erected.

3. *And be it further enacted*, That where any inhabitant of Wayne county already hath or hereafter may, make an entry for lands lying in said county with the Land surveyed in Wayne.

entry-taker of Dobbs county, and the warrant of survey is not already executed, said entry-taker is hereby required to make out and direct such warrant to the proper surveyor of Wayne county.

CHAP. 163.

An act for annexing part of Carteret to Jones, and other purposes.

1. WHEREAS the upper part of Carteret which lies adjoining Jones county. is much more convenient to the public buildings of said county than to those of Carteret :

Part of Carteret
added to Jones.

2. *Be it therefore enacted*, That all that part of the said county of Carteret beginning in Jones county line in the head of Black Swamp, thence running down the meanders of said swamp to White-Oak river, then up the various courses of said river to the head, thence a direct line to Jones county line, that all that part on the north side of said White-Oak river, and west of the aforesaid swamp, shall, from and after the passing of this act, be held and deemed part of the county of Jones, and the inhabitants thereof shall be under the same rules and restrictions as the other inhabitants of Jones county are. *Provided nevertheless*, That nothing herein contained shall be construed to debar any sheriff, collector or tax-gatherer, from collecting his or their taxes in the same manner as if this act had never been made.

Land surveyed.

3. And whereas some of the inhabitants of Carteret county, which by this act is annexed to Jones, may have entered land in the entry-office of Carteret ; *Be it therefore enacted*, That where any persons shall have entered land as aforesaid, the entry-taker of the county of Carteret is hereby empowered and directed to make out warrants and orders of survey and direct them to the surveyor of Jones county ; which said surveyor is hereby ordered and empowered to survey said land, take the same fees, and make the same transmittance thereof, as if the same had been entered in the entry-office of Jones.

Read three times, and ratified in General Assembly, }
the tenth day of November, 1779. }

SIGNED BY

ABNER NASH, S. S.

THOMAS BENBURY, S. C.

At a General Assembly, begun and held at Newbern, on the seventeenth day of April, in the year of our Lord one thousand seven hundred and eighty, and in the fourth year of the independence of the said state : Being the first session of this Assembly.

Abner Nash,
Esq. governor.

CHAP. 164.

An act allowing salaries to the governor, council of state and others, and other purposes.

All but this section altered by subsequent acts.

And be it further enacted, That it shall and may be lawful for the governor or commander in chief, with the advice of the council of state, to call a meeting of the general assembly, if the same shall be absolutely necessary, at a sooner day than the same may stand adjourned to or appointed to meet.

Assembly may be called.

CHAP. 165.

An act to amend an act, entitled, An act to amend an act, for establishing offices for receiving entries of claims for lands in the several counties within this state, for ascertaining the method of obtaining titles to the same, and for other purposes therein mentioned.

1. WHEREAS it is enacted by the before recited act, that all warrants of surveys shall be returned within twelve months after the same is received by the several surveyors in this state, which is found by experience not sufficient for the purpose therein intended : For remedy whereof,

2. *Be it enacted, &c.* That a longer time of twelve months be allowed, after the passing of this act, for each surveyor to make their returns, which shall be done under the like rules and regulations as in the before recited act ; any thing contained in the before recited act to the contrary notwithstanding.

Time for returning surveys.

3. *And be it further enacted,* That a further time of two years be given to all persons who have heretofore or may hereafter, obtain grants of lands under the present government, to have the same registered ; any law, usage or custom to the contrary notwithstanding.

For registering grants.
[See 1777, c. 110—1782, c. 174.]

CHAP. 166.

[See 1779, c. 141.]

An act for the relief of the people called moravians, quakers, menonists and dunkards, within this state.

1. WHEREAS by an act of the general assembly of this state, entitled, an act to amend an act for declaring what crimes and practices against the state shall be treason, and what shall be misprision of treason, and providing punishments adequate to the crimes of both classes, and preventing the dangers which may arise from persons disaffected to the state, all persons within this state are required to take an oath or affirmation to the state, and in case of refusal are either to be sent out of the state or to be deprived of the benefit and protection of the laws of said state, and disabled from prosecuting or defending any suit either in law or equity; and whereas numbers of persons under pretence that the people called quakers, moravians, menonists, and dunkards, have not taken an affirmation to the state, have entered and taken up the lands which the said denominations of people have remained in quiet possession of for many years: For remedy whereof, and to prevent such abuses for the future,

Quakers, &c.
relieved.

2. *Be it enacted, &c.* That from and after the passing of this act, when it shall appear that any of the people of any of the said denominations within this state, who are in unity with the people of their respective persuasions, shall have been lawfully possessed of any lands within the said state, either by patent, deed, or otherwise, whereon any other person hath heretofore made entry and under the above said pretence, all such entries and the proceedings thereon shall be deemed null and void; and in case any entries shall hereafter be made on any of the lands of the said people, such entries shall also be void and of no effect.

CHAP. 167.

[See 1778, c. 136 & 137.]

An act to amend an act, entitled, an act for quieting and securing the Tuscarora Indians, and others claiming under the Tuscaroras, in the possession of their lands.

1. WHEREAS by the said act there is no penalty imposed on jurors or witnesses, duly summoned, and failing to attend;

Attendance of
jurors.

2. *Be it enacted, &c.* That the commissioners by the said act appointed, or any three of them, assembled for

the purpose of holding a court, shall and may inflict fines on jurors or witnesses so failing to attend, not exceeding one hundred pounds, at their discretion; and unless sufficient excuse be to them afterwards shewn, cause the same to be levied and applied towards defraying the county charges of Bertie: and the witnesses and jurors who shall attend on the trial of any dispute between the said Tuscaroras and others, shall have and receive ten dollars *per* day for their attendance, to be paid by the party cast, with all other costs; and such trials may hereafter be had on any part of the lands belonging to said Tuscaroras in Bertie county, which the commissioners shall direct.

Read three times, and ratified in General Assembly, }
the tenth day of May, A. D. 1780. }

SIGNED BY

ALEX. MARTIN, S. S.

THOMAS BENBURY, S. C.

At a General Assembly, begun and held at Hillsborough, on the fifth day of September, in the year of our Lord one thousand seven hundred and eighty, and in the fifth year of the independence of the said state: Being the second session of this Assembly. Abner Nash, Esq. governor.

CHAP. 168.

An act for suspending the operations of an act, for carrying into effect an act, commonly called the confiscation act. [See 1781. c 170, s. 8.]

1. WHEREAS from the unsettled state of public affairs, and from the fluctuating state of the currency, as well as from other causes, the act directing the sale of confiscated property has not answered the purposes intended thereby, and the army of the enemy now in the state of South-Carolina, would occasion the said property to sell greatly under its intrinsic value; and whereas the lands confiscated to the state would, if reserved, establish a valuable and permanent fund, either for supplying the army and navy with provisions, or for establishing a paper currency, which would in all probability maintain its original value;

2. *Be it therefore enacted*, That the operation of an act, entitled, An act to carry into effect an act passed at Newbern, in the year one thousand seven hundred and seventy-seven, entitled, An act for confiscating the pro- Act suspended.

perty of all such persons as are inimical to this or the United States, and of such persons as shall not within a certain time therein mentioned appear and submit to the state whether they shall be received as citizens thereof, and of such persons as shall so appear, and shall not be admitted as citizens, and for other purposes therein mentioned, and for other purposes, and the powers of the commissioners appointed under the said act, be and are hereby suspended, and shall continue suspended, and of no effect, from and immediately after the passing of this act, until the end of the next session of the general assembly.

Lists of confiscated property to be returned.

3. And whereas it is necessary that the general assembly should be informed of the different kinds and quantities of confiscated property in the state, in order that the same may be applied to the most beneficial purposes for the public use; *Be it therefore enacted*, that the commissioners of the respective counties (and where no commissioners have been appointed, or where appointed have declined qualifying, then the sheriff of such county) shall return to the next session of the general assembly a separate list of the property of every person who comes within the confiscation acts, or any of them, which shall be found within their respective counties; which lists shall be signed by such commissioners or sheriffs, and shall contain all the lands, houses, and other real estate, slaves, horses, hogs, neat cattle, and sheep, and other moveable property, confiscated by any act or acts of the general assembly, and how much of the same hath been sold under the said acts, or claimed by other persons.

Titles to be completed.

4. *And be it enacted*, That the several commissioners shall in the mean time complete the titles of such sales as they may have *bona fide* made agreeable to law, any thing in this act to the contrary notwithstanding.

CHAP. 169.

[See 1779, c. 144, and acts there referred to.]

An act for quieting such persons as may suffer in their titles and claims of lands, by reason of the extension of the boundary line between this state and the commonwealth of Virginia.

1. WHEREAS from the extension of the dividing line between this state and the commonwealth of Virginia, lands claimed under the authority and sanction of the

laws of Virginia are found to fall within this state, though deemed when patented and surveyed, to lie within the then colony of Virginia; and whereas sundry persons have proceeded to make entries on the said patented and surveyed lands as aforesaid, whereby divers persons, patentees and claimants aforesaid, are likely to be greatly injured in their just rights; and whereas it is right policy to do equal justice, and grant reciprocal advantages to citizens whose states are in union;

2. *Be it therefore enacted, &c.* That all entries made within the limits of the said patented and surveyed lands as aforesaid, shall and are hereby declared to be suspended until the end of the next session of the general assembly of this state; and the entry-takers and surveyors of the counties of Washington and Sullivan, are enjoined and required, at their peril, to desist from any further proceedings on said lands.

Certain entries
suspended.

Read three times and ratified in General Assembly, }
the 13th of September, Anno Dom. 1780, }

SIGNED BY

ALEX. MARTIN, S. S.

THOMAS BENBURY, S. C.

At a General Assembly, begun and held at Halifax, on the eighteenth day of January, in the year of our lord one thousand seven hundred and eighty-one, and in the fifth year of the independence of the said state: Being the third session of this assembly.

Abner Nash,
Esq. governor.

CHAP. 170.

An additional act to an act, entitled, an act for securing the quiet and inoffensive inhabitants of this state, from being injured, for preventing such property as hath or may be confiscated from being wasted or destroyed, and for other purposes; for continuing an act, entitled, an act for suspending the operation of the act, for carrying into effect an act commonly called the confiscation act; and for directing and regulating elections in particular instances; and also for giving further time to surveyors to complete their surveys. [See 1780, c. 168.]

1. WHEREAS it is found by experience that the first recited act is insufficient to answer the purposes intended thereby, and since the passing thereof new abuses have arisen: For remedy whereof,

2. *Be it enacted, &c.* That the commissioners of forfeited estates in each county, or for want of such the sheriff or coroner, and where there is no sheriff or coro-

Commissioners'
duty.

ner the county court, are hereby strictly enjoined to seize and take into their possession all such property as has been described in the said act ; and in case any person or persons should persist to retain the same in defiance of this and the foregoing act, such commissioners, sheriff, coroner or county court, as the case may be, shall call upon the commanding officer of the militia of the county for such aid as may be necessary to secure the quiet possession thereof ; and every militia officer refusing or neglecting to act, when called upon in manner herein directed, shall forfeit and pay the sum of twenty thousand pounds ; to be recovered in any court of record, in the name, and to the use of the state. *Provided nevertheless,* That the estates of all such persons as have been heretofore in arms against, and are now on service in defence of this state, and who shall continue therein so long as to complete the term of eighteen months actual service from the time of their entering respectively, and also the estates of all such persons who having joined the enemy, may return and serve in the army of this state, agreeable to a resolve of this general assembly, shall be suffered to be and remain in the peaceable possession of the respective families of all such persons ; any thing in this or any other law to the contrary notwithstanding.

Lands, &c. to be
rented.

4. *And be it enacted,* That the lands, tenements, hereditaments, and negro slaves, shall be rented and hired out by public auction, to the highest bidder, for any term not exceeding one year, and so from year to year, until the general assembly shall direct otherwise ; and the horses shall be valued and put into the public service, and the beef, cattle and fat hogs shall be delivered to the county commissioners for public use ; and all other personal property shall be secured and preserved as well as may be.

Bargains, &c.
void.

5. And whereas in many counties in this state, as it is asserted, divers bargains, contracts, sales, conveyances, and deliveries, have been made and entered into for property falling within the description in the said first recited act, in order to evade the operation of the same act ; *It is therefore enacted,* That all such bargains, contracts, sales, conveyances, and deliverances, made and entered into since the expiration of the last session of the general assembly (notwithstanding that the same may bear a prior date) shall be considered from the beginning as null and void, and made in direct violation of law ; and all such property shall be liable to the same process and pro-

ceedings as if such bargains, contracts, sales, conveyances, and deliveries, had never been made.

6. And whereas many avaricious and evil disposed persons, in direct violation of many acts of the general assembly, have made entries of lands which come within the confiscation act, and have actually seated themselves thereon, and cut and destroyed large quantities of timber, and committed manifold trespasses : For remedy whereof, *Be it enacted*, That the commissioners of confiscated estates in each county, or for want of commissioners the sheriff or coroner, or where there is no sheriff or coroner the county court, shall as soon as may be after the passing of this act, cause an exact account to be taken of all lands in their respective counties, supposed to come within the confiscation act, where entries or settlements have been made, or shall hereafter be made, and transmit the same to the attorney-general at the first superior court to be held for the district in which such lands lie, with a description as exact as possible of such entries, settlements, and other trespasses ; and the attorney-general is hereby directed and enjoined to prosecute all such trespassers in the name of the state, by indictment, action of trespass and ejectment, or any of them, as he shall think proper ; and the judges of the superior courts are directed and empowered to give judgment upon such prosecutions, in the same manner as if such lands had been conveyed to the state by the common mode of conveyance, and all the formalities of the law had been strictly observed.

Returns to be made.

Prosecution directed.

7. *And be it enacted*, That where any property confiscated to the state by any act of assembly hath been, or may hereafter be conveyed out of the county to which the same originally belonged, it shall be lawful for the commissioners of forfeited estates, the sheriff, coroner, or justices of the county as aforesaid, to pursue and seize such property in manner as if the same had never been removed, any law or statute to the contrary notwithstanding.

Property seized.

8. And whereas an act of assembly passed at Hillsborough in August last, entitled, an act for suspending the operation of an act for carrying into effect an act commonly called the confiscation act, will expire at the end of the present session of assembly, unless further continued ; *Be it therefore enacted*, That the said act, passed

Act continued.
[See 1780, c.
168, s. 2.]

If no coroner,
&c. justices to
appoint a free-
holder to hold
an election.

at Hillsborough as aforesaid, shall continue and be in force until the general assembly shall otherwise direct.

9. And whereas from divers causes it may happen that there may not be either sheriff or coroner in some counties in this state to take and make return of elections for members of the general assembly; *Be it therefore enacted*, That where there shall not be either sheriff or coroner to take the poll at the annual or any other election, it shall be lawful for three justices of the peace to appoint some reputable freeholder to hold the election, with the same powers, directions and restrictions, as sheriffs by law are invested with and subject to, and such elections so made shall be as valid as if taken and held by the sheriff or coroner.

Further time al-
lowed survey-
ors.

10. *And be it further enacted*, That the surveyors of the several counties within this state shall be allowed a further time of twelve months from the passing of this act to complete their surveys, and make their returns to the secretary's office.

CHAP. 171.

[See 1779, c.
144; and acts
there referred
to.]

An act to continue an act, entitled, an act for quieting such persons as may suffer in their titles and claims of land, by reason of the extension of the boundary line between this state and the commonwealth of Virginia.

1. WHEREAS an act, entitled, an act for quieting such persons as may suffer in their titles and claims of lands, by reason of the extension of the boundary line between this state and the commonwealth of Virginia, which passed the last session of assembly, will expire, unless it be further continued:

Act continued.

2. *Be it therefore enacted*, &c. That the same shall be, and is hereby continued, until the claims mentioned in the said recited act shall be fairly heard, and finally determined, by the general assembly of this state.

Read three times and ratified in General Assembly, }
the 14th of February, A. D. 1781. }

ALEX. MARTIN, S. S.
THOMAS BENBURY, S. C.

At a General Assembly begun and held in Wake county, on the day of June, in the year of our Lord one thousand seven hundred and eighty-one, and in the sixth year of the independence of the said state: Being the first session of this Assembly.

Thomas Burke,
Esq. governor.

CHAP. 172.

An act to regulate and ascertain the several officers' fees therein mentioned.

[Repealed by
1783, c. 185, s.
2.]

And be it enacted, That from and after passing this act, it shall not be lawful to enter any lands with any entry-taker in this state; and in case any quantity of lands shall be entered with any of the entry-takers in this state after the passing hereof, all such entries so made, shall, and the same are hereby declared null and void: And so much of an act of the general assembly, entitled, An act for establishing offices for receiving entries of claims for lands in the several counties within this state, for ascertaining the method of obtaining titles to the same, and for other purposes therein mentioned, as comes within the purview and meaning of this act, is hereby declared void; and every entry-taker in this state is hereby strictly required to forbear making any further entries on any pretence whatsoever.

The other objects of the act provided for by subsequent acts.

No lands to be entered.

Read three times and ratified in General Assembly, }
the 14th of July, Anno Dom. 1781. }

SIGNED BY

ALEX. MARTIN, S. S.

THOMAS BENBURY, S. C.

At a General Assembly, begun and held at Hillsborough, on the thirteenth day of April, in the year of our Lord one thousand seven hundred and eighty-two, and in the sixth year of the independence of the said state; Being the first session of this Assembly.

Alexander Martin,
Esq. governor.

CHAP. 173.

An act for the relief of the officers and soldiers in the continental line, and for other purposes therein mentioned.

[See 1783, c.
186—1784, c.
198, 199—1785,
c. 239.]

1. WHEREAS it is proper that some effectual and permanent reward should be rendered for the signal bravery

Lands allowed
the troops.

[Sec 1796, c.
456.]

and persevering zeal of the continental officers and soldiers in the service of the state ; *Be it enacted*, That each continental soldier of the line of this state, who is now in service, and continues to the end of the war, or such as from wounds or bodily infirmities, have been, or shall be rendered unfit for service, which shall be ascertained by a certificate from the commanding officer, shall have six hundred and forty acres of land ; and every officer who is now in service, and shall continue in service during the war, as well as those officers who from wounds or bodily infirmities, have left, or may be obliged to leave the service, shall have a greater quantity, in proportion to his pay, as followeth : A private, six hundred and forty acres of land, and each non-commissioned officer one thousand acres, a subaltern two thousand five hundred and sixty acres, a captain three thousand eight hundred and forty acres, a major four thousand eight hundred acres, a lieutenant-colonel five thousand seven hundred and sixty acres, a lieutenant-colonel commandant, seven thousand two hundred acres, a colonel seven thousand two hundred acres, a brigadier, twelve thousand acres, a chaplain seven thousand two hundred acres, each surgeon four thousand eight hundred acres, each surgeon's mate two thousand five hundred and sixty acres ; and where any officer or soldier has fallen, or shall fall, in the defence of his country, his heirs or assigns shall have the same quantity of land that such officer or soldier would have been entitled to, had they served during the war ; and the aforesaid grants of land to each officer and soldier, shall be free from taxation during the term they respectively shall continue in actual service, unless by them sooner disposed of.

Pre-emptions
allowed for the
benefit of cer-
tain settlers on
the land.

2. And whereas in May, one thousand seven hundred and eighty, an act passed at Newbern, reserving a certain tract of country to be appropriated to the aforesaid purposes, and it being represented to this present assembly, that sundry families had, before the passing the said act, settled on the said tract of country ; *Be it enacted*, That six hundred and forty acres of land shall be granted to each family, or head of a family, and to every single man of the age of twenty-one years and upwards, (to include their improvements) settled on said land before the first day of June, one thousand seven hundred and eighty, for which they shall have the right of pre-emption. *Provided*, No such grant shall include any salt lick, or salt

spring, which are hereby declared to be reserved as public property, together with six hundred and forty acres of the adjoining lands, for the common use and benefit of the inhabitants of that country, and not subject to future appropriations; and all the remainder of the aforesaid tract of country shall be considered as subject to partition, as by this act directed.

3. *And be it further enacted*, That Absalom Tatom, Isaac Shelby, and Anthony Bledsoe, Esquires, or any two of them, are appointed commissioners in behalf of the state, to examine and superintend the laying off the land in one or more tracts allotted to the officers and soldiers, and they shall be accompanied by one or more agents, whom the officers may appoint, to assist in the business; and in case any commissioner so appointed shall die, or refuse to act, his excellency the governor shall fill up the vacancy.

Commissioners to lay off the land allotted to the officers and soldiers.

4. And whereas it is proper that an early opportunity should be taken to explore, and lay off those lands; *Be it therefore enacted*, That his excellency the governor, or his successor, shall be empowered in the course of the present year, or as soon as the situation of public affairs shall render it practicable and expedient, to direct the commissioners to proceed in the execution of their duty, and he shall appoint them a proper guard, not exceeding one hundred men, properly officered, which said officers shall be appointed and commissioned by the governor. And that each commissioner shall receive, in one survey, five thousand acres of land for his service.

Directions as to their proceeding on duty.

5. *And be it further enacted*, That twenty-five thousand acres of land shall be allotted for, and given to Major General Nathaniel Greene, his heirs or assigns, within the bounds of the lands reserved for the use of the army, to be laid off by the aforesaid commissioners, as a mark of the high sense this state entertains of the extraordinary services of that brave and gallant officer.

Lands allowed Gen. Greene.

6. *And be it further enacted*, That the said commissioners are hereby authorised and empowered to appoint one or more surveyors, not exceeding three, as they may find necessary, for the more speedy and effectual laying off, and surveying the said lands, and also to employ the usual number of chain-carriers and markers, and such number of hunters (not exceeding six) as may be absolutely necessary to supply the persons concerned in this business with provisions; which said surveyors shall be

Surveyors, &c. appointed.

allowed two thousand five hundred acres of land each for their services, the chain-carriers, markers and hunters, six hundred and forty acres each for their services, and the private men of the guard three hundred and twenty acres each, and the officers of the guard in proportion to their militia pay respectively.

Commissioners
how to ascer-
tain rights of
pre-emption.

7. *And be it further enacted*, That the commissioners shall be empowered, from time to time, during the execution of this business, to administer an oath or oaths in cases where doubts may arise respecting any settler claiming a right to pre-emption under this act, and to grant certificates to such persons as shall appear to them to have a right to the same; and the said commissioners are directed and required to note down, in a book to be kept by them for that purpose, the names of such persons to whom certificates of pre-emption may be granted, a copy of which certificates they shall return to the general assembly, also an accurate draught of the country they may explore, and the tracts of land they may lay off.

To take an oath.

8. *And be it further enacted*, That the commissioners hereby appointed shall take an oath, to do equal right and justice in determining preference to the settled, as by this act admitted.

CHAP. 174.

[See 1780, c.
165, & 1783, c.
193.]

An act for the relief of persons who have suffered, or may suffer, by their deeds and mesne conveyances not being proved and registered, within the time heretofore appointed by law.

1. WHEREAS many persons, through ignorance of the law, have neglected to have their deeds and mesne conveyances proved and registered, according to the directions of the several acts of assembly in such case made and provided, or through the confusion of the times have been prevented from a compliance with the aforesaid acts: For remedy whereof,

Time extended
for the register
and probate of
deeds, &c.

2. *Be it enacted, &c.* That all deeds and mesne conveyances of lands, tenements and hereditaments, not already registered, acknowledged or proved, shall and may within two years after the passing of this act, be acknowledged by the grantor or grantors, his or their agents or attornies, or proved by one or more of the subscribing witnesses to the same, and tendered or delivered to the

registers of the counties where such lands, tenements or hereditaments are respectively situated ; and all deeds and mesne conveyances whatsoever, which shall be acknowledged or proved, according to the directions of this act, though not within two years after the date of the respective conveyances, shall be good and valid in law, and shall enure and take effect, as fully and effectually, to the use and behoof of the grantees, their heirs and assigns, and those claiming under them, as if such deeds and conveyances had been acknowledged or proved, and registered, agreeable to the directions of any act of assembly heretofore made. *Provided nevertheless*, That nothing herein contained shall be construed to affect, or in any manner whatsoever to relate to, lands or other property of persons coming within the description or penalties of the confiscation act, or any other act creating forfeitures for acts of high and petit treason. *Provided also*, That nothing in this act contained shall be construed so as to admit to record, or ratify and enforce any grant or grants, heretofore made in lord Granville's office.

Exceptions as to confiscated or forfeited property.

3. And whereas sundry persons may have purchased land at a time when it was not in their power to have their deeds admitted to record, owing to a stop being put to the business of the several county courts within this state, since which time the grantor or grantors, together with the subscribing witnesses, have removed themselves out of the county where the land lies, to the great prejudice of the purchaser or purchasers ; and whereas there is no law to compel them, or any of them, to appear at any of the said courts to acknowledge or prove any such deed or deeds ; *Be it enacted*, That any person or persons under the before mentioned circumstances, after making it appear to the satisfaction of said courts where such cases may be, the said county courts are hereby empowered to grant a *dedimus*, directed to some justice of the peace in the county or state where such grantor, grantors, or all or any of the subscribing witnesses may be, empowering the said justice to take the acknowledgment, or probate of such deed, and requiring him to certify the same under his hand and seal, directed to the county court, setting forth that such deed or deeds have either been acknowledged by the grantor or grantors, or otherwise proved by the oath of one or more of the subscribing witnesses, then and in that case, such county courts may, and are hereby empowered to admit such deed or deeds

How to be proved where witnesses have removed out of the county, 1784, c. 203, s. 3.

to record, which shall be as good and valid in law, as if the same had been acknowledged or proved in open court of said county, any law to the contrary notwithstanding.

CHAP. 175.

An act directing the sale of confiscated property.

[Obsolete.]

Forfeited es-
tates.

1. **WHEREAS** many large and valuable tracts of land, as well as negroes and other personal property, of persons who have left this state, gone over to the enemy, and joined the same, and others, have been forfeited to the state, and it is apprehended the selling the same will be a means of raising a considerable revenue to the state :

2. *Be it enacted, &c.* That all the lands, tenements, and hereditaments, negroes and other estates, real and personal, which were, on the fourth day of July, in the year of our lord one thousand seven hundred and seventy-six, and at any time since, the property of the following persons, *to wit*, William Tryon and Josiah Martin, esquires, sir Nathaniel Duckinfield, Henry M'Culloch, Henry Eustace M'Culloch, Samuel Cornell and Edmund Fanning, Thomas M'Knight, late of Currituck county, James Parker, William M'Cormack, John Dunlap, Neal Snadgrass, and John Lancaster, late of Pasquotank county. James Green, Mariner, and John Alexander, late of Graven, Thomas Oldham, late of Chowan, Thomas Christie, of the kingdom of Ireland, Frederick Gregg, late of New-Hanover, Andrew Miller, Alexander Telfair, Hugh Telfair, John Thompson, John Hamilton, and Archibald Hamilton, late of Halifax, George Alston, late of Granville, Michael Wallace, John Wallace, late merchants of Virginia, William Field, John Field, jun. and Robert Turner, late of Guilford, John Moore, late of Tryon, James Roberts, late of Surry, George Miller, late of Dobbs, James Cotton, Walter Cunningham, Samuel Williams, late of Anson, Samuel Bryan, William Spurgin, Matthias Sappingfield, late of Rowan, William M'Lellan, late of Edgcomb, Mess. Dinwiddie, Crawford, and company, late of Bute county, Robert Palmer, late of Beaufort, Edward Brice Dobbs, Ralph M'Nair, John M'Nair, Joseph Field, James M'Neill, Arch. M'Kay, Alex. M'Kay, Neil M'Arthur, John Leggett, John M'Cloud, Collin Shaw, Wm. Campbell, James Gamble, and company, Thomas Rutherford, William Rose, Alex-

ander M^cKay, Mess. Waller and Bridgen, merchants in London, Alexander M^cCauslin, late of Newbern, Alexander Campbell, Robert Bell, and Duncan Campbell, late of Granville, Francis Williamson, late of Currituck county, Chancey Townsend, Doctor Tucker, late of Wilmington, Buchanan, Hastie, and company, James M^cNeil, late of Halifax county, and Alexander Munn, late of Wake county, shall be considered as absolutely forfeited, and shall be sold by the commissioners by this act appointed, in manner herein after directed.

§. And whereas the property of sundry other persons hath been seized by the commissioners of confiscated property, sheriff or coroner, in the different counties of this state, as forfeited under some one or other of the acts of assembly commonly called the confiscation laws, and some differences have arisen, or may arise, respecting the legal forfeiture of the same; *Be it therefore enacted*, That in all cases whatsoever, (except in cases relating to the property of the persons herein before expressly named) the county commissioners of confiscated property, and where there are no commissioners, the sheriff, and where no sheriff, the coroner of each county shall, by notice under their, or his hand, require each and every person in the county where they are commissioners, he is sheriff or coroner, in whose hands or possession any property is, which has been, or may be seized as forfeited, and all other property within this state which may be deemed forfeited, and confiscated by any law, though the same may not hitherto have been seized, or possessed by any commissioner, sheriff or other officer, to appear at the next county court to be held for such county, and before the justices thereof shew cause, if any they have, why such property shall not be adjudged as confiscated to the use of the state; and on failure of the person or persons so notified to appear, the property in the hands of such person or persons, shall be adjudged by the justices of the county court to be forfeited. But wherever any person or persons shall appear, in pursuance of such notice, and dispute the right of confiscation, then and in such case, the court shall direct a trial to be had at the same court, by the jury attending such court, in the same manner as trials are had in other cases; and in case of a verdict being found, that the property in dispute is forfeited under the confiscation laws, then the same shall be sold in the same manner as other property directed to be sold

Notice on disputed property.

under this act. *Provided*, That the claims set up by persons under entries or grants obtained since the declaration of independence, shall not be deemed a claim under this act, so as to obstruct or delay the sale thereof, except such entries or grants as have been, or may be made, on the large tract of land called No. 5, and of which Arthur Dobbs, esquire, died seized.

Condemned
property to be
be sold.

4. *And be it further enacted*, That all the lands, tenements, and hereditaments, with their, and every of their appurtenances lately belonging to the several persons herein before named, as well as all those which shall, under this act, be adjudged as forfeited, shall be sold by the commissioner at public vendue for specie, such commissioner giving public notice thereof, by advertising the same at all the court-houses in the district in which such property shall be, at least one month before such sales. which sales shall be made on credit for five years, the purchasers giving judgment bonds, with sufficient security, payable to the governor for the time being, or his successor, for the use of the state, in double the amount of the purchase money, conditioned for the payment of the principal at the end of the said five years in specie, and for the faithful payment and discharge of six *per cent.* interest thereon annually; and in case of the interest not being regularly paid, judgment shall be entered in any court of record for the same, and the bond shall not be void on the first recovery, but judgment may be entered thereon from time to time, so as not to exceed the whole penalty of such bond, until the interest and principal shall be recovered.

Certificates to
be received.

5. *Provided nevertheless*, That every purchaser who is willing, and desirous of paying any part of the purchase money down, not exceeding two-thirds thereof, shall be at liberty to pay the same in certificates issued for currency by the general assembly, or by any board of auditors in this state, at or before the session of assembly at Wake court-house, one thousand seven hundred and eighty-one, at the rate of one hundred and fifty dollars currency for one in specie, (certificates for soldiers bounty excepted) or in currency or certificates issued as aforesaid, for currency since the said session of assembly at Wake court-house, at eight hundred dollars currency for one in specie.

Commissioners
to attend the
sales.

6. *And be it further enacted*, That seven commissioners be appointed to superintend the sales of such forfeited estates, whose duty it shall be to receive returns of all con-

fiscated property from the commissioners, sheriff or coroner, in each county, and direct the surveyors of the counties, to survey and lay off all the forfeited lands in their respective counties, and return one plan thereof to him, and one other plan to the secretary's office; which surveys shall not contain more than six hundred and forty acres of land in each; and the said commissioners shall attend the sales of such lands, and make return thereof to the governor and commander in chief for the time being, or his successors in office, within three months after such sale, in which shall be expressed the quantity and description of the land, county where situated, to whom sold, and the price, with the bond for payment of principal and interest; and thereupon the governor and commander in chief shall cause grants, under the great seal of the state, to be made to the respective purchasers; which grants shall be enrolled in the secretary's office, and registered in the county where the lands lie, in the same manner as other grants; but no grant shall issue from the secretary's office until the purchaser shall, in order further to secure the payment of the purchase money and interest as aforesaid, execute a mortgage of the lands contained in his grant to the governor and commander in chief for the time being, for the use of the state; in which mortgage it shall be expressly declared, that the same shall be void on the regular payment of the interest yearly, and of the principal at or before the end of the said five years, and on failure of such payment, it shall be lawful for the state to re-sell the same lands to any other person, or so much thereof as may be sufficient to raise the balance that shall be then due to the public for principal and interest, from any of the grantees, and their secretaries, their heirs or assigns.

7. *And be it enacted*, That in case of the death, removal out of this state, or resignation of all, or any of the commissioners named in this act, that his excellency the governor, with the advice of the council of state, be and he is hereby authorised and empowered to appoint other commissioner or commissioners to fill such vacancy or vacancies.

Commissioners kept up.

8. *And be it further enacted*, That the said commissioners shall, before they enter on the execution of their office, take an oath that they will truly and faithfully execute their said office agreeable to the directions of this act; and such commissioners, for such their faithful ser-

Their oath, and commissions.

vices, shall be entitled to a commission of one per cent. to be paid them by any one of the treasurers on a warrant from the governor, or commander in chief for the time being, and allowed such treasurer in his accounts with the public.

Surveyors' fees. 9. *And be it further enacted,* That the county surveyors shall be allowed the sum of forty shillings for each and every survey by them respectively made, agreeable to the directions of the said commissioners, paying the chain-bearers, and returning the plans according to the directions of this act, to be paid by warrant from the governor in manner aforesaid. And in case any surveyor shall meet with opposition by force, he shall apply to the commanding officer of the county, who, on having the same ascertained on oath, shall order out so many of the militia under his command as may be sufficient to repel such force, and support the surveyor in the execution of his office.

Sales where held.

10. *And be it enacted,* That the sales of all confiscated lands, negroes and horses shall be held at the several district court-houses in this state, *to wit,* Hillsborough, Halifax, Salisbury, Newbern, Wilmington, Edenton, and Morgan, by the persons for that purpose appointed; and the sales of all other confiscated property in the several counties where the same may be, by the commissioners or commissioner of confiscated property for such counties respectively, or in case of the neglect or refusal of such commissioners, then by the sheriff or coroner of the county where such refusal or neglect shall happen; and the commissioners shall divide the negroes as nearly as may be, into four equal lots, of which three lots shall be sold for specie, payable in certificates for currency, or currency at the rate herein before mentioned, or specie certificates at their nominal value, the remaining lot to be sold for hard money, one half to be paid in hand, the other half to be paid at six months, for which judgment bonds shall be given, payable to the governor, or his successor, with good and sufficient security; and the commissioners aforesaid are hereby required and directed to give public notice thereof, in the Virginia and North-Carolina gazettes (if such shall be published) at least sixty days previous to such sale, and also at the most public places in the districts respectively.

And how sold.

Time of sales.

11. *And be it further enacted,* That the commissioners of confiscated property herein before mentioned, shall

cause all such confiscated property to be sold on or before the first day of January next; and the commissioners are hereby directed and required to order and direct the sales of such in their respective districts in such manner that the sales in no two or more of the districts shall be on the same week, or in such manner as to prevent any person or persons being desirous of attending the sales of a reasonable time to go from one sale to another, and that the commissioners so appointed shall settle with the district commissioner for all sums that may arise from such sales.

12. *And be it enacted*, That the county commissioners shall open the sale of all the confiscated property in their district herein mentioned on one day, and continue the same open until the whole of the property so collected is sold in the said district. To be on one day.

13. *Provided nevertheless*, That the commissioner for the counties of Washington and Sullivan may and shall sell the confiscated property in those counties at the court house in Washington, which sales the commissioner for the district of Morgan is hereby required to attend, any thing in this act to the contrary notwithstanding. And the remaining part of the property as herein before mentioned in the district of Morgan, to be sold at Burke court-house, under the same rules and restrictions as herein before mentioned. Sales in Washington and Sullivan.

14. And whereas it has been represented to the general assembly that sundry licentious persons, during the late disturbance in this state, have taken by force or otherwise various kinds of property from the disaffected inhabitants, and have applied the same to their own use; *Be it therefore enacted*, That the commissioners of confiscated property shall be, and they are hereby authorised and directed to demand and receive such property so taken as aforesaid, from any person being possessed of the same within their counties respectively; and any person being possessed of property, and refusing to deliver the same to any county commissioner, or his order, shall forfeit and pay a sum in specie equal to three times the estimated value of such property so detained, to be recovered by action on the case, in the name of the governor, for the time being, for the use of the state; and the commissioners shall sell the property so demanded and received in the same manner as other perishable confiscated property. Property taken from the disaffected, and how disposed of.

Persons having property to be cited to appear.

15. *And be it enacted*, That the commissioners of confiscated property, and all justices of the peace, are hereby authorised and directed to cause all persons within their county whom they suspect, or believe to have been possessed of property taken as herein aforesaid, to appear before some justice of the peace, and declare upon oath what property so taken as aforesaid he now is, or has been possessed of; and if it shall appear that any person summoned to appear as aforesaid, hath been possessed of such property, he shall pay the estimated value thereof to the commissioners for the use of the state, under the penalty herein aforesaid.

Not to extend to property taken from the enemy.

16. *Provided nevertheless*, That this act shall not extend to any species of property taken from the enemy in action, or within their lines, when the same may be proved by two or more witnesses, to the satisfaction of the commissioner or commissioners. *Provided also*, That the several commissioners shall have full power to stop any sale, or the sale of any article, when it is evidently below its value.

Commissioners to pay the treasurers.

17. *And be it further enacted*, That the superintendent commissioners of confiscated property within this state, pay over the money by him or them received from the sales of property as aforesaid, into the hands of the district treasurers, within twenty days from the date of such sales as may be made in consequence of this act, under the penalty of double the sum or sums by him or them so received, to be recovered by action on the case, in the name of the governor for the time being, for the use of the state.

Not to affect legal sales.

18. *Provided nevertheless*, That nothing herein contained shall be construed to invalidate or affect any legal sales made, and the consideration money *bona fide* paid to any of the persons enumerated in this act, pursuant to an act of the general assembly, entitled, An act to amend an act for declaring what crimes and practices against this state shall be treason, and what shall be misprision of treason, and providing punishments adequate to the crimes of both classes, and for preventing the dangers which may arise from persons disaffected to the state.

Persons' estates forfeited.

19. *Be it enacted*, That every person who has been a resident in this state, and have heretofore attached themselves in any manner whatsoever to the enemies of this, or the United States, it is hereby fully and entirely expressed, that all the property of such person or persons,

shall be considered as having been forfeited to and for the use of this state, from the time that such person so joined the enemy as aforesaid; and that all bargains and sales, wills and devises, made so as to interfere with this act, is and are hereby declared to be null and void, to all intents and purposes.

20. *Provided nevertheless*, That it shall be lawful for the several county courts in this state, and they are hereby strictly required, previous to any sales which may be made in virtue of this act, to set apart so much of the personal property, including all the household goods of every estate liable to be sold as aforesaid, as will be sufficient for the reasonable support of the wives, widows and children, of any person whose estate is, or may be confiscated, and one-third of the lands, or so much thereof as will be sufficient for their support, to be laid off by the county surveyor, in the same manner as lands in dower are directed by the common law, or may, at their discretion, assign the whole of the land, and manor plantation, where the same may be of small value, and not more than sufficient for the purposes aforesaid; and the respective county courts are hereby required to make due return of all such lands and other property, to the next general assembly for their future determination. *Provided*. That no such reservation of property shall be made, unless for wives, widows and children, now subsisting in this state.

Provision for
wives and chil-
dren.

CHAP. 176.

An act for ascertaining what property in this state shall be deemed taxable property, the method of assessing the same, and collecting public taxes. [See 1784, c. 195—1784, c. 219.]

1. WHEREAS doubts have arisen whether lands which have been entered in the land-offices, and for which grants have not been yet obtained, should be deemed taxable property; *Be it enacted*, That when any person has heretofore made, or shall hereafter make, entries of land in the land-offices of this state, agreeable to the act in such case made, and when no caveats have been entered against such entries, that then and in that case, such lands shall be given in as taxable property, and assessed accordingly. *Provided always*, That this clause shall not affect any lands subject to the operation

Entries of lands
taxable.

of the confiscation law, all entries of which are hereby declared null and void.

Estates to be delivered in by executors, &c.

[See 1819, c. 999.]

What lands taxable.

2. *And be it further enacted*, That inventories of the estates of testators, intestates, minors and absentees, shall be delivered by the executors, administrators, guardians, agents or attorneys, in the same manner as the estates of other persons; and on refusal or neglect, the tax shall be levied of the proper estate of such executor, administrator, guardian, agent or attorney, any law or custom to the contrary notwithstanding.

3. *And be it enacted*, That every person holding lands by title of dower, courtsey, or other estate for life, or on lease for five years or more, shall pay all such taxes as shall be assessed on the same, in like manner as owners of other lands are required to pay by this act.

CHAP. 177.

An act for giving an equity jurisdiction to the Superior Courts.

1. **WHEREAS** the courts of law as at present established, are not equal to the redress of all kinds of injuries, but many innocent men are withheld of their just rights, and some deprived of them altogether, for want of a court or courts of equity:

Courts of equity established.

a [Now county, 1806, c. 694.]

2. *Be it therefore enacted*, That from and after the expiration of the present session of the General Assembly, each superior court of law in this state shall also be and act as a court of equity for the same district, (a) and possess all the powers and authorities within the same, that the court of chancery which was formerly held in this state under the late government used and exercised, and that are properly and rightfully incident to such a court, agreeable to the laws in force in this state, and not inconsistent with our present constitution. *Provided*, That no final decree shall be passed by any such court but where two of the judges at least are present. (b)

Two judges necessary to pass a final decree.

Rules.

3. *And be it further enacted*, That the rules and methods of proceeding in the said courts shall be as follows, *that is to say*,

In what cases the plaintiff may obtain a writ to hold defendant to special bail.

The plaintiff may file his bill in the clerk's office, either during term time, or in the vacation, and therein suggest on oath such damages as he thinks he has incurred by

b [One is competent, 1806, c. 694.]

the conduct complained of in the defendant, (which damages are to be stated in specie) and thereupon the clerk shall issue a writ of subpœna as is usual in cases of chancery, or in case either of the judges (a) shall give special order to hold the defendant to bail, the clerk (b) shall issue a writ directed to the sheriff of the county wherein the defendant is supposed to be resident, as follows :

The State of North-Carolina, to the Sheriff of county,
ty, greeting :

You are hereby commanded to take the body of , late of your county, (if to be found in your county) and him safely keep, so that you have him before the judges of the superior court of law and equity for the district of , at the town of , on the day of next, or until he shall give you good and sufficient security in the sum of pounds specie, (which sum is hereby directed to be double the damages suggested on oath in the bill) to appear and answer at the said court on the day aforesaid, to a bill in equity filed against him by , and this you shall in no wise omit at your peril. Witness , clerk of the said court, at , the day of , and in the year of the state.

a [Or the clerk may issue the writ without order, 1789, c. 314.]

b [Clerk and master in equity to be appointed and his fees established, 1787, c. 278, s. 3—1793, c. 389, s. 7—his accountability for tax fees on suits, 1813, c. 864.]

Form of the writ.

Which writ the sheriff is hereby directed and required to obey ; and the same rules and regulations shall be observed in regard to bonds taken by virtue of this act, and that they be on the same footing in all respects as bail bonds taken by the sheriff on actions at law, except that they shall be assignable by the sheriff or his executors or administrators, under the direction of the court, and the sheriff is to be held liable for taking insufficient security as in such cases in actions at law. *Provided,* That no such writ shall issue against an executor, administrator or heir at law, who is sued as such, but the process against such executor, administrator or heir at law, shall be by a writ of subpœna, as usual in cases of chancery, and the penalty for not appearing and answering shall be one hundred pounds specie, but the said penalty is not to be levied, nor final judgment given for it, until the term ensuing that to which it is returnable, nor without a scire facias having been duly served, and proof thereof made to the satisfaction of the court, as in cases at law where scire faciases are required.

How to be served, &c.

Process against executors, &c. must be by subpœna.

Case of different defendants.

And where any other person is made a defendant together with such executor, administrator or heir at law, as aforesaid, a *capias* may issue as above against such other person, and a writ of *subpœna* against such executor, administrator or heir at law.

Manner of service.

No writ shall be served by the sheriff unless he has a copy of the bill ready to deliver to the defendant, and he is hereby required to deliver the said copy immediately after the service of the said writ; nor shall any service be valid unless it be made at least ten days before the term at which the defendant is required to appear; and where the service is by *subpœna*, the defendant shall be served with a copy of the bill at least ten days before such term, on failure of any of which requisitions, the defendant may plead the matter in abatement, and the bill shall be dismissed.

In what cases the bill may be taken *pro confesso*, &c.

Upon such writ or *subpœna* being duly served, and a copy of the bill delivered in proper time, (proof being made to the satisfaction of the court by return of the sheriff or by affidavit) the defendant (*a*) shall appear and put in his answer or plea, agreeable to the practice in chancery, or demur; or on failure thereof the plaintiff's bill shall be taken *pro confesso*, and appointed to be heard *ex parte* at the ensuing term. *Provided*, That if within the three first days of the said ensuing term, the defendant shall offer any satisfactory reason to the court for his not appearing at the first term, the order for the bill being taken *pro confesso*, and heard *ex parte* may be discharged, and the defendant then admitted to plead, answer or demur, and such time shall be allowed in this as well as in all other cases for the pleadings on both sides, and such day appointed for the hearing as the court shall direct.

Commissions to take testimony how to issue.

Commissions to take testimony may issue, directed to any two justices of the peace, who shall have all the powers of commissioners of chancery, and the rules of proceeding in all cases of taking such testimony shall be conformable to the method of proceeding formerly observed in the court of chancery in this state. *Provided*, That no such testimony shall be taken until at least twenty days notice of the time and place of taking the same be given to the opposite party, unless the court for sufficient reasons should appoint any other limited time for the notice, which they may do in all cases, either by enlarging

Notice necessary.

or shortening the time hereby appointed for taking such testimony, as the case may require.

Commissions may also issue to any justice or justices of the peace to take the plea, answer, or demurrer of a defendant, as is accustomed in cases in chancery with respect to commissioners of chancery. and the said justice or justices shall have all the power of such commissioners for that purpose.

Any one judge of the court may in the vacation, if it shall be necessary, grant such commissions as are above mentioned, or may himself examine testimony, or take the plea, answer or demurrer of a defendant in like manner; he may also grant injunctions, or *ne exeat*, where the necessity of the case will not admit of a delay, but still subject to the controul and further order of the court; and no *ne exeat* shall issue where sufficient bail has been taken for the party's appearance.

Power of one judge in the vacation.

All matters of fact that shall come in issue between the parties shall be determined by a jury in the presence of the court, as in trials at law, and the trial shall be by the jury attending the superior court, or if they shall be discharged, it may be by a jury summoned *instantly*, (who are to be qualified as other jurymen) or a special jury may be summoned for that purpose with the consent of the parties, and approbation of the court, and the mode of proceeding by such juries shall be the same in every respect as in trials at law; the same rules and methods to be observed in this case as have been practised upon questions of fact being submitted by a court of chancery to the decision of a common law jurisdiction.

Matters of fact coming in issue, how to be tried.

Costs shall be paid by either party at the discretion of the court.

Costs how to be given.

The court may at any time during the dependence of the suit, require further security from a defendant, or on failure thereof, make use of such personal process as was formerly used by the court of chancery held in this state, and deemed incident to the chancery jurisdiction; and the court shall in all cases have power to order such process to enforce their sentences or decrees, as have usually belonged to courts of chancery.

Court's power as to ordinary security.

And process in general.

4. *And be it further enacted*, That from and after the expiration of the present session of the general assembly, each superior court of law in this state shall be called (a) in all court proceedings, the superior court of law and equity for its respective district, and shall have

Title of the court.
a [Shall be styled the court of equity, 1787, c. 278.]

the like jurisdiction in the said district in matters of equity, as it now has in matters of law, and shall be deemed equally for that purpose a court of record.

Sheriff's fees.

5. *And be it further enacted*, That the respective sheriffs shall be entitled to receive the same fees for any services under this act, as for the like services in proceedings at law, and be entitled to the same remedy for the recovery of them.

CHAP. 178.

See 1783, c. 192 An act to establish a department for adjusting and liquidating the public accounts of this state, and for appointing a comptroller, and other purposes.

Comptroller.
(See 1783, c.
192, 1787, c. 268
1792, c. 368.
1793, c. 397.
1814. c. 877.)

1. *And be it further enacted*, That a comptroller shall be appointed by the general assembly, who shall keep his office as near as conveniently may be to the centre of the state, and whose duty it shall be to direct the mode of stating, to check and controul all public accounts in every department; that he shall enter up in books for that purpose a clear and distinct view of the accounts of each department, ready for the inspection of the general assembly; and who shall at any time when required by his excellency the governor and council of state, make out a brief state of the public accounts for their information.

Comptroller's
oath.

2. *And be it further enacted*, That the comptroller, before entering on the duties of his appointment, shall before some justice of the peace, take the following oath:

I, A. B. do swear, that I will well and truly execute the trust reposed in me as comptroller, without favour or partiality, according to law, to the best of my knowledge and understanding. *So help me God.*

Comptroller
kept up.

3. *And be it enacted*, That in case of the resignation or death of the comptroller, the supreme executive are hereby authorised and empowered to nominate a person to exercise the powers, and perform the duties of comptroller, during the recess of the general assembly.

CHAP. 179.

An act to regulate and ascertain the fees to the secretary of state, the governor's private secretary, the surveyors, and other officers.

1. WHEREAS it is necessary that adequate fees be allowed to the secretary of state, the governor's private secretary, and the county surveyors, for services by them respectively to be performed :

2. *Be it therefore enacted, &c.* That for the future the said officers shall take and receive the following fees, to wit, the secretary of state, for receiving the surveyor's return, filing the plan, making out and recording the grant, with the indorsement thereof, and the certificate thereon, to be paid by the grantee at or before the delivery of the said grant out of the office, four shillings, (a) for docketing a caveat, filing order of suspension of grants, issuing and certifying such suspension to the court, and entering and filing the judgment of court thereon, four shillings (b) ; for copying and certifying a will, four shillings ; for copying and certifying the record of a grant or patent, four shillings ; for every commission for a place of profit, eight shillings ; for every search, (c) eight pence ; for every certificate, one shilling ; for recording inventories, orders for letters testamentary or of administration, to be received and accounted for by the clerk of the county court, two shillings and eight pence ; to the governor's private secretary, for the certificate of suspension (d) of a grant, two shillings and eight pence ; for every testimonial, (e) five shillings ; for every commission for a place of profit, eight shillings (f) ; for the great seal, (g) two shillings and eight pence ; for sealing each grant for land, including wax, paper and tape, used in making the same, to be paid by the grantee on or before the delivery of the grant out of the secretary's office, two shillings and eight pence. (h) To the surveyor, for making each survey of three hundred acres or under, sixteen shillings ; for every hundred acres more than three contained in a warrant, four shillings. (i)

Officers' fees:

a [5s. 1799, c. 535.]

b [5s. *ibid.*]

c [1s. *ibid.*, and see 1812. c. 838, s. 3.]

d [7s. 6d. 1806, c. 702.]

e [10s. *ibid.*]

f [20s. *ibid.*]

g [2s. 6d. 1799, c. 535.]

h [2s. 6d. *ibid.*]

i [For surveying lands in dispute by order of court, 20s. per diem, 1786, c. 252.]

3. *And be it further enacted,* That so much of the tenth clause of an act of assembly passed at Wake court-house in June, one thousand seven hundred and eighty-one, entitled, an act to regulate and ascertain the several officers fees therein mentioned, as directs that the fees therein rated in specie, shall be received in currency at the proportion of two hundred for one, is hereby repeal-

Repealing clause.

ed and made void ; and that the above fees shall and may in future, be discharged in specie or eight hundred currency for one specie.

CHAP. 180.

An act for the security of the bank of North-America.

Counterfeiting,
&c. bank notes,
felony without
clergy, see
1819, c. 994.

1. *And be it further enacted*, That if any person shall erase, alter, or counterfeit any note or notes of the aforesaid bank of North-America, he shall be deemed guilty of felony without the benefit of clergy ; and if any president, inspector, director, officer or servant, of the said bank, shall convert any of the property, money or credit of the said bank, to his own use, or in any other way be guilty of fraud or embezzlement as an officer or servant of the bank, he shall be deemed guilty of felony without benefit of clergy.

CHAP. 181.

See 1779, c.
144, and acts
there referred
to.

An act to confirm certain patents therein specified, issued in Virginia, for lands, which on the extension of the boundary line between this state and that, are found to lie within the State of North-Carolina.

1. **WHEREAS** it is represented to this general assembly that certain lands granted and patented in the State of Virginia, under a supposition of their being within the bounds thereof, have on the late extension of the boundary line between this state and that, been found to lie within the bounds of this state ; and although it is consonant to justice, to custom, and to the obligations of federal union, that titles to such lands should be established in this state, yet it is adviseable, in order to prevent monopolies and obviate stale or latent grants, to particularise the lands which stand in the said predicament.

Patents estab-
lished.

2. *Be it enacted*, &c. That the patents or grants herein after enumerated, which were so issued in Virginia for lands now found to lie within this state, shall be good and valid in this state, in like manner as if they had been passed or issued therein, either previous or subsequent to the declaration of independence. *Provided*, That the said patents or grants were, or would have been good and valid in Virginia, according to the laws thereof, previous to the extension of the said boundary line. *Provided also*, That

nothing herein contained shall be construed so as to defeat any previous or elder grant or deed, which may have been issued in the State of North-Carolina, for the same lands, or any part thereof. The said patents or grants as above ratified, established and confirmed, are and shall be as follows, *to wit*, a patent issued to Edmund Pendleton bearing date the sixteenth day of August, one thousand seven hundred and fifty-six, containing three thousand acres, and lying on a branch of the middle fork of Indian river, called West creek, according to the courses thereof: a patent issued to John Shelton, bearing date the same day and year, containing nine hundred and forty acres, and lying on the middle fork of the Indian river, according to the courses thereof: a patent issued to John Buchanan, bearing date the twentieth day of June, one thousand seven hundred and fifty-three, for one thousand two hundred and fifty acres, and lying on the Indian river, according to the courses thereof: and one other grant or patent issued to William Campbell and William Preston, executors of John Buchanan, who was assignee of James Patton, deceased, bearing date the twenty-third day of December, one thousand seven hundred and seventy-nine, containing one thousand nine hundred and forty-six acres, and lying on Wood's river, or Shelton creek, a branch of the middle fork of Indian river, at a place called the Sappling Grove, according to the courses thereof.

3. *And be it further enacted*, That the confirmation of the said patents, as above enumerated, shall accrue and enure to the confirmation of the titles of any person claiming under either of the said patentees as purchasers, as much as if they had been the original patentees, and had been named in this act.

And confirmed
to under pur-
chasers.

4. *And be it further enacted*, That any person claiming a tract of land in virtue of this act, may apply to a magistrate, who shall issue his warrant to the sheriff to summon a jury of good and honest men, who are not interested in any of the lands herein mentioned, to meet on the premises in question; which jury being met, shall be sworn by the said magistrate to enquire what person or persons possess the best title to the said lands under this act, and having returned their verdict to such magistrate, he shall thereupon by his warrant require the sheriff (who shall attend for the purpose) to put the person who shall be so found to possess the best title under this act, his agent or attorney, into actual possession of the said premises.

How put in pos-
session.

Provided, That such verdict shall only effect the bare possession of the said premises, and shall not be a bar to a suit or suits which any person or persons may think proper to commence for the recovery of the said lands, but such suit shall be tried and determined in like manner as if no jury had been impannelled thereon. *Provided nevertheless*, That no jury shall be summoned to meet on the premises before the first day of December next.

CHAP. 182.

See 1777, c. 123. An act to amend an act, entitled, an act to prevent burning the woods.

1. WHEREAS the penalties in the said act are not sufficient to answer the good purposes therein mentioned ;

2. *Be it therefore enacted, &c.* That every person offending against the said act, shall forfeit and pay for every offence the sum of twenty-five pounds specie, to be recovered by action of debt, bill, plaint, or information, to the use of the person who shall sue or prosecute for the same, and shall also be further liable to the party injured by such unlawful firing of the woods for all damages that may accrue therefrom.

CHAP. 183.

An act for adding part of Burke county to Lincoln, for appointing commissioners for the purpose therein mentioned, and for laying a tax to compleat the public buildings therein.

1. WHEREAS it hath been represented to the assembly by the inhabitants living in the south-east part of Burke county, that they labour under great hardship in attending on courts and other public meetings in the said county, from their remote situation from the court-house, and have prayed to be added to the county of Lincoln ;

2. *Be it therefore enacted, &c.* That a line shall be run as follows, *viz.* beginning at Sharrol's ford, running with the road leading towards Henry Whitner's, as far as Matthew Wilson's, thence a direct course to Simon Horse's, on the waters of Clark's creek, thence a direct course to the Fish-Dam ford of the South Fork of the Catawba river, between James Wilson and David Robinson, and from thence a south-west course to earl Granville's old line ; and that all that part of Burke county lying south-east of the line above described, shall henceforth be

Part of Burke
added to Lin-
coln.

taken off from Burke, and shall be added and remain to Lincoln county.

Read three times, and ratified in General Assembly, }
the twelfth day of May, A. D. 1782.

SIGNED BY

RICHARD CASWELL, S. S.
THOMAS BENBURY, S. C.

CHAP. 184 IS OMITTED.

CHAP. 185.

An act for opening the land-office for the redemption of specie and other certificates, and discharging the arrears due to the army. [See 1784, c. 197, 200, 201, 202, 229—1785, c. 236—1786, c. 257.]

1. **WIEREAS** opening the land-office, and granting the lands within this state, would not only redeem the specie and other certificates due from the public, but greatly enhance the credit thereof;

2. *Be it therefore enacted, &c.* That so much of an act of the general assembly, passed at Wake, entitled, An act to regulate and ascertain the several officers' fees therein mentioned, (a) as prohibits the future entering of lands with any entry-taker in this state, and declares void so much of an act for establishing offices for receiving entries of claims for lands in the several counties within this state, for ascertaining the method of obtaining titles to the same, and for other purposes therein mentioned, (b) shall be null and void; and the act last above recited is hereby declared to be in full force and efficacy, except so much thereof as comes within the purview and meaning of this act. Repealing act repealed. a [See 1781, c. 172.] b [1777, c. 114.]

3. *And be it further enacted,* That the western boundary be enlarged and established by a line beginning in the line which divides this state from that of Virginia, at a point due north of the mouth of Cloud's creek, running thence west to the Mississippi, thence down the Mississippi to the thirty-fifth degree of north latitude, thence due east until it strikes the Apalachian mountains, thence with the Apalachian mountains to the ridge that divides the waters of French-Broad river, and the waters of Nollichuckei river, and with that ridge until it strikes Western boundary enlarged and established. [Superseded by the act of cession, 1789, c. 299—accepted by congress, see acts congress, 2d April, 1790, 2d vol. p. 85.]

the line described in the fifth section of an act, entitled, An act to amend an act for establishing offices for receiving entries of claims for lands in the several counties within this state, for ascertaining the method of obtaining titles to the same, and for other purposes (*a*) ; and with that line, and those several water courses, to the beginning.

a [1778, c. 132.]

Entries and grants without the boundary to be void.

[Obsolete.]

Lands reserved to the Cherokee Indians.

4. *And be it further enacted*, That all entries of land heretofore made, or grants already obtained, or which may be hereafter obtained in consequence of the aforesaid entries for land, to the westward of the line last above described in this act, be, and the same are hereby declared to be null and void, to all intents and purposes, as if such entries and grants had never been made or obtained.

5. *And be it further enacted*, That the Cherokee Indians shall have and enjoy all that tract of land bounded as follows, *to wit*, Beginning on the Tennessee where the southern boundary of this state intersects the same nearest to the Chickamawga towns, thence up the middle of the Tennessee and Holstein to the middle of French-Broad, thence up the middle of French-Broad river (which lines are not to include any island or islands in the said river) to the mouth of Big-Pidgeon river, thence up the same to the head thereof, thence along the dividing ridge between the waters of Pidgeon river and Tuckasejah river, to the southern boundary of this state; and that the lands contained within the aforesaid bounds shall be and are hereby reserved unto the said Cherokee Indians and their nation forever; any thing herein to the contrary notwithstanding.

Penalty for entering, &c. Cherokee lands.
b [See 1809, c. 774—1817, c. 950.]

Such entries, &c. void.

All purchases of said lands to be void.

6. *And be it further enacted*, That no person shall enter (*b*) and survey any lands within the bounds set apart for the said Cherokee Indians, under the penalty of fifty pounds specie for every such entry so made, to be recovered in any court of law in this state, by and to the use of any person who will sue for the same; and all such entries, and grants thereupon, if any should be made, shall be utterly void.

7. *And be it further enacted*, That no person, for any consideration whatever, shall purchase or buy, or take any gift or lease of any tract of land within the said bounds, of any Indian or Indians, but all such bargains, sales, gifts and leases shall be, and are hereby declared to be null and void; and the person so purchasing, buy-

ing, leasing, or taking any gift of any land, of any Indian or Indians as aforesaid, shall moreover forfeit the sum of one hundred pounds specie for every hundred acres so purchased, bought, leased or taken as aforesaid, one-half to the use of the state, and the other half to him that will sue for the same, to be recovered in the manner as aforesaid.

Penalty on persons purchasing &c. the same.

8. And whereas the said Indians may receive injuries from people, hunting, ranging or driving stocks of horses, cattle or hogs, on the lands hereby allotted them : For remedy whereof, *Be it enacted*, That it shall not be lawful for any person or persons whatsoever to hunt or range on the said lands, or to drive stocks of cattle, horses or hogs thereon, on pain of forfeiting the sum of fifty pounds specie for every such offence, together with such stock or stocks of horses, cattle or hogs, so driven; to be recovered by any person who shall sue for the same in the manner aforesaid.

No persons to hunt, range, or drive stock on their lands.

Penalty:

9. *And be it further enacted*, That it shall and may be lawful for any person who now is, or hereafter shall become a citizen of this state, according to the constitution thereof, to enter with the entry-taker to be appointed by joint-ballot of both houses of this general assembly to receive entries for claims of land (all lands in this act reserved for the Indians excepted) a claim for any lands, provided such claim does not exceed five thousand acres.

[Obsolete,] Entries by whom to be made.

[Land offices shut, see 1784, c. 196, s. 3.]

Quantity.

10. *And be it further enacted*, That every person claiming, before he shall be entitled to enter a claim for any of the said lands, shall pay into the hands of the entry-taker at the rate of ten pounds in specie, or in specie certificates at their nominal value, or certificates for currency as rated by law, and all other certificates at the value ascertained by the scale of depreciation, for every hundred acres so entered, together with the fees which by this act shall be established.

What to be paid previous to an entry. [Obsolete.]

[See 1784, c. 229, where payments are made in counterfeit certificates.]

11. *And be it further enacted*, That the claimant of any land shall produce to the entry-taker a writing signed by such claimant setting forth where the land shall be situated, the nearest water-courses, mountains and remarkable places, and such water-courses and remarkable places as may be therein, the natural boundaries and lines of any other person or persons, if any, which divide it from other lands; and every such writing shall be in one quarter of a sheet of paper at least, and shall be endorsed by the entry-taker with the name of the

Lands how to be ascertained by the claimant.

[See 1784, c. 197, s. 5.]

Entry taker's duty.

claimant, and number of acres claimed, and date of the entry; and a copy thereof shall be entered in a well-bound book, bound with a large margin, and into spaces of equal distances, every space to contain one entry only, and every entry to be made in the order of time in which it shall be received, and numbered in the margin; and if no person shall appear within three months after such entry, to make claim for the said lands, the entry-taker shall deliver to the party a copy of the entry with its proper number, and a warrant to the surveyor to survey the same, which warrant shall be written or printed on a half sheet of paper at least; but if any person shall appear and set up a claim to any lands so entered, the entry-taker shall note the same in the margin of the book of entries opposite such claim, and transmit the whole to the court, to be proceeded on as by the said act directed.

Time limited
for adverse
claims.

Proceedings in
consequence of
such claim.

Lands reserved
for continental
officers & sol-
diers excepted
from entry.

Entry taker to
give bond to
discharge his
duty.

How to be pro-
ceeded on in
case of a breach.

Secretary's du-
ty in respect to
grants.

Grant to be re-
gistered in the
county within 12
months, see
1780, c. 165
1784, c. 203, s. 1.

Fees of entry

12. *Provided nevertheless*, That it shall not be lawful for any person to make entry of, or settle on any lands within the bounds reserved for the officers and soldiers of the continental line of this state.

13. *And be it further enacted*, That every entry-taker that now is, or hereafter may be appointed, shall previous to his entering on the execution of his office, enter into bond with approved security, in the sum of ten thousand pounds specie, to the governor for the time being, for the faithful discharge of his respective duty; which bond upon a breach of the condition thereof, shall be assigned by the governor to the party or parties injured, who shall or may maintain an action or actions thereupon in his or their own names, and shall not become void upon the first recovery, or if judgment be for the defendant, but may be put in suit from time to time, until the whole penalty be recovered.

14. *And be it further enacted*, That the secretary shall make out grants for all surveys returned to his office, which grants shall be authenticated by the governor, countersigned by the secretary, and recorded in his office, ready to be delivered to the parties to whom the same shall be made, on the first day of April and October, in every year; and every person obtaining a grant for lands, shall within twelve months after such grant shall be perfect as aforesaid, cause the same to be registered in the register office of the county where the lands shall be.

15. *And be it further enacted*, That the several entry-

takers, surveyors, registers, and the secretary, shall be entitled to have and receive the fees hereafter particularly specified, and no more; *that is to say*, To the entry-taker for all services, four shillings; to the surveyor for making the survey, and all other services, for every three hundred acres or under, sixteen shillings, and for every one hundred acres more, four shillings. (a)

takers, surveyors, registers, & secretary.

a [See 1786, c. 252.]

16. And in order to ascertain such grants as may issue in future, *Be it enacted*, That with each return hereafter to be made, the surveyor shall return two fair lists, setting forth the name of the grantee, and number of acres surveyed, with the date of such return; one of which lists shall be signed by the surveyor, and left with the secretary, and the other signed by the secretary and returned to such surveyor.

Surveyors to return lists, &c.

17. And whereas many disputes have and may arise from the surveyor giving preference to warrants of a younger date, and not certifying in the return of survey, the date of the entry, and number of the warrant under which the same is surveyed, by means whereof grants have in many instances issued on such returns contrary to the true intent and meaning of the said act: For prevention whereof in future, *Be it enacted*, That every entry-taker within this state shall make out and deliver to the surveyor, on or before the first day of April, and the first day of October annually, the warrants for the several entries (which are not disputed) made in his office endorsed in the manner aforesaid; which surveyor shall proceed in his surveys, according to the number and date of the respective entries, and shall within twelve months after the receipt thereof, lay off and survey the same agreeable to the directions of the said act; and shall make two fair plats thereof, on not less than a quarter of a sheet of paper, certifying in such plats the date of the entry, and number of the warrant under which the same shall be made, and shall set down in words at length, the beginning, courses, distances, marks and water courses, together with the lines of such lands as may join the same, and the quantity of acres; which return shall be signed by such surveyor or his deputy, and transmitted with the warrant to the secretary's office within eighteen months after receiving the same, under the penalty of fifty pounds specie for every default, to be recovered by the action of the party injured, before any jurisdiction having cognizance thereof, and applied to his own use.

Entry takers when to deliver their warrants, and manner of doing the same, to the surveyor.

Surveys how to be made.

And returned, &c.

Penalty for neglect.

Proviso for entries caveated.

18. *Provided always*, That where any entry shall be caveated, it shall not be lawful for such surveyor to survey any entry for the same land, (of a younger date than the one caveated) joining or intersecting such entry, until a final determination be had on such caveat; and every entry-taker shall copy and transmit to the surveyor every caveat entered in his office, with the time of entering such caveat, and the number thereof.

Governor may suspend the execution of grants.
(See 1801, c. 569, s. 7.)

19. And whereas grants may be secretly obtained on entries heretofore made by artful and designing men, for land to which they have no just title, to the great injury of many of the inhabitants of this state; for prevention whereof, *Be it enacted*, That upon complaint being made on oath, and sufficient reason shewn to the governor or commander in chief, he may suspend the execution of such grants, and direct the secretary to certify the same to the court of the county wherein the land may lie, and the court shall, upon receiving such certificate from the secretary, order a trial by jury, in the same manner as they might do if a caveat had been made in the office of the entry-taker, and the proceedings to be conducted in the same manner as is directed by the before recited act.

Proceedings thereupon.

Repealing clause.

20. *And be it further enacted*, That so much of the aforesaid act of the general assembly for establishing offices for receiving entries of claims for lands in the several counties within this state, for ascertaining the method of obtaining titles to the same, and for other purposes therein mentioned, and the several amendments thereof, as comes within the meaning of this act, shall be, and are hereby repealed and made void.

Certain lands to be entered in Burke and Rutherford.

21. *And be it further enacted*, That all the lands lying between the Iron mountain and the present Indian boundary, as far as a point opposite to the line already extended betwixt Burke and Rutherford counties, shall be entered in the county of Burke; and all the lands south of the last mentioned line to the south line of this state and the Indian boundary, from the aforesaid point, shall be entered in the county of Rutherford.

When this act to be in force.

22. *And be it further enacted*, That this act shall be in force, and take effect in the respective counties in this state, on the first day of August next, excepting for the lands appropriated by sundry acts of this assembly, lying to the westward of the present Indian boundary line, which said lands shall not be liable to be entered until the twentieth day of October next

CHAP. 186.

An act to amend an act, entitled, an act for the relief of the officers and soldiers of the continental line, and for other purposes.

1. **WHEREAS** by the above mentioned law, certain quantities of land are allowed to sundry persons, officers and soldiers, and to the heirs of sundry officers and soldiers who have fallen in the course of the war, for obtaining titles to which no mode is pointed out:

2. *Be it therefore enacted, &c.* That each and every person and persons entitled to land by virtue of the aforesaid law, shall on application being made to the secretary of the state, obtain and receive from him a warrant of survey for such quantities of land, within the limits of the land reserved by the aforesaid law for the said officers and soldiers, as he, she, or they, by the aforesaid law shall be entitled to, which shall be directed to colonel Martin Armstrong, who is hereby appointed surveyor for this purpose, and is authorised and required, by himself or deputy, to execute and return the same into the secretary's office within the same time, and in the same manner as is required in other cases; and for which services he shall be entitled to the same fees, and be subject to the same pains and penalties for neglect or breach of duty; and shall also previous to his entering upon the exercise of that office, take the same oath in presence of the governor, as is by law appointed to be taken by other surveyors, and shall also administer to every chain-carrier who shall be employed with him in running out any of the said tracts, the same oath as is usually administered to chain-carriers in other cases.

3. And least disputes should or may arise between two or more persons by each wishing or claiming to have his warrant or warrants located on the same piece of land; *Be it enacted,* That in such case the parties contending or claiming the same, shall cast lots for the choice, and the person in whose favour the lot falls, shall have the preference to such tract or parcel of land so claimed.

4. *And be it further enacted,* That no warrant shall be issued by the secretary in virtue of this act, before the first day of October next; and the officers and soldiers aforesaid shall be allowed the term of three years from the first day of October next to secure the lands hereby reserved for them.

5. *And be it further enacted,* That where a warrant shall be hereafter located, without any person making ob-

Secretary to issue warrants of survey.

[See 1782, c. 173.]

Surveyor appointed, &c.

[See 1782, c. 173, s. 11, and 1784, c. 198.]

His oath.

Disputes determined by lot, 1782, c. 173, s. 12.

[Obsolete.]

When the warrants are to issue.

Time allowed the officers, &c. for securing.

Locations valid if not objected to in time:

jections to such location, that such location shall be good and valid, notwithstanding the claim that may be afterwards set up by any other person.

Secretary to
make out
grants, &c.

6. *And be it further enacted*, That the secretary shall make out grants for all surveys returned to his office, which grants shall be authenticated by the governor, countersigned by the secretary, and recorded in his office ready to be delivered to the parties to whom the same shall be made.

Within what
lines the lands
to be bounded.

7. *And for prevention of disputes, Be it enacted*, That the officers and soldiers aforesaid shall enter and survey the lands within the following lines, *that is to say*, beginning in the Virginia line where Cumberland river intersects the same, thence south fifty-five miles, thence west to the Tennessee river, thence down the Tennessee to the Virginia line, thence with the said Virginia line east to the beginning.

None but the of-
ficers & soldiers
shall enter with-
in three years.

8. *And be it further enacted*, That no person or persons but the officers and soldiers of the continental line (except those who are now settled on Cumberland river and have a right of pre-emption, whose claims are hereby reserved to them) shall enter any lands within the said bounds within three years after the passing of this act; and all entries hereafter made within that time, by any except officers or soldiers entitled by law, are hereby declared void.

Commissioners,
&c. allowed
lands.

9. *Provided nevertheless*, That Anthony Bledsod, Absalom Tatom and Isaac Shelby, late commissioners to lay off the lands for the continental officers and soldiers, and the surveyors guards, and others who accompanied the said commissioners on that duty, shall each obtain titles to such quantity of land within the bounds aforesaid, as they or each of them are entitled to by the act under which they were appointed, by entering the said lands with the entry-taker of Davidson county, who is required to receive their claims without any purchase money, and to grant them warrants for the same.

How to enter
them.

Surveyor al-
lowed usual
fees, and per-
mitted to take
land within said
bounds for the
same.

10. *And be it further enacted*, That the surveyor by this act appointed, shall have the same fees as by law are appointed for public surveyors, and shall be, and hereby is allowed and permitted to lay off for himself, within the bounds of the aforesaid tract of land, equal to the amount of his fees, rating the said lands at ten pounds the hundred acres, any thing in this act notwithstanding.

11. *And be it further enacted*, That all officers who

have served with reputation two years and upwards, and either resigned, or were left out of the line on the reduction of their respective corps, and their heirs, shall be entitled to grants of land proportionate (having respect to their time of service) to those grants that officers who have served during the war are entitled to by law, computing their term of service at seven years; and also all soldiers who have served two years or upwards, shall be entitled to grants of lands proportionate (having respect to their time of service) to those grants of lands that soldiers who have served two years and a half are entitled to by law.

How lands to be proportioned between officers, and also between soldiers, according to the length of service.

12. *And be it further enacted*, That his excellency Alexander Martin, esquire, and David Wilson, esquire, be entitled, agreeable to report of the committee, to two thousand acres of land each, adjacent to lands allotted for the officers and soldiers, for which they shall have and receive titles in the same manner as is directed by this act, for the officers and soldiers to obtain titles to their lands, any law or custom to the contrary notwithstanding.

Lands allowed to gov. Martin & David Wilson.

13. And whereas it will be more convenient for the officers and soldiers to attend at Halifax than at Newbern, to have their accounts liquidated and settled; *Be it enacted*, That Willie Jones, Benjamin McCulloch, and Henry Montfort, esquires, be and they are hereby appointed commissioners in the room and stead of James Coor, John Hawks, and William Blount; and in case of the death of the said Willie Jones, Benjamin McCulloch, or Henry Montfort, or refusal to act, the governor is hereby empowered to appoint one or more persons in his or their place, as the case may be, to liquidate and settle the officers' and soldiers' accounts to the first day of January, one thousand seven hundred and eighty-two, who are hereby empowered to allow interest on all accounts by them settled, agreeable to a resolution of this general assembly of the fifteenth of May.

New commissioners for the army accounts appointed, &c. [Obsolete.] (See post c. 192.)

Their duty

CHAP. 187.

An act for establishing a scale of depreciation, with a provision for suits commenced for paper currency, and for suspending the operation of the laws therein mentioned.

1. WHEREAS much difficulty hath arisen in the adjusting and settling debts and demands, as well within the

courts of this state, as out thereof, from the rapid depreciation of paper currency emitted in circulation; and that a fixed and permanent scale may be established for the ascertaining the value of the same in future,

Scale of depreciation established.

2. *Be it therefore enacted*, That from and after the passing of this act the following scale shall be, and is hereby declared to be the only scale to determine the value of the depreciation of the paper currency of this state in all cases whatsoever, estimating the same in specie; deeming one Spanish milled dollar, weighing seventeen penny weight six grains, to be of the value of eight shillings specie; which scale shall be as follows, *that is to say*,

YEARS and MONTHS:	1777.	1778.	1779.	1780.	1781.	1782
January, - - -	0	3 1-2	6	32	210	800
February, - - -	0	3 1-2	6 1-2	35	225	800
March, - - -	1 1-4	3 3-4	7 1-2	40	250	800
April, - - -	1 1-2	4	10	50	260	800
May, - - -	1 3-4	4	10	60	300	800
June, - - -	2	4	12 1-4	75	350	800
July, - - -	2 1-8	4 1-4	15	90	400	800
August, - - -	2 1-4	4 1-2	18	100	500	800
September, - - -	2 1-4	4 1-2	21	125	550	800
October, - - -	2 1-2	4 3-4	25	150	600	800
November, - - -	2 1-2	5	27	175	675	800
December, - - -	3	5 1-2	30	200	725	800

Value of coins.
a [Provided for by the constitution of the U. S. act 1, s. 8, & the acts of congress thereon which make this table obsolete.]

3. *And be it further enacted*, That the following scale of the value of gold and silver foreign coin, shall be the only value thereof, in the transactions of gold and silver hereafter; *that is to say*, (a)

A TABLE OF COINS.

GOLD COINS.

	dwt. gr.	l. N. Cur.
A Guinea, - - -	5 6	1 17 4
Half a Guinea, - - -	2 15	18 8
A French Guinea, - - -	5 5	1 16 0
Moidore, - - -	6 18	2 8 0
Four Pistole piece, - - -	17 0	6 0 0
A Pistole - - -	4 4	1 10 0
Double Johannes, - - -	18 0	6 8 0
Single ditto, - - -	9 0	3 4 0
Half ditto, - - -	4 12	1 12 0
Quarter Johannes, - - -	2 16	0 16 0

SILVER COINS.

	dw. g.	l. N. Cur.
French Crown, - - -	—	0 9 0
English Crown, - - -	—	0 9 0
Half Crown, - - -	—	0 4 6
Quarter ditto, - - -	—	0 2 3
A Dollar, - - -	17 6	0 8 0
Half Dollar, - - -	—	0 4 0
Quarter Dollar, - - -	—	0 2 0
A Pistareen, - - -	—	0 1 8
English Shilling, - - -	—	0 1 8

And the said scale shall hereafter be read in evidence in all the courts of this state, to liquidate all debts and demands, and in entering up judgments thereon. Scale to be read in evidence.

4. *Provided always*, and it is the true intent and meaning of this act, that on trials of actions for debt, where the debt is in the present time, and the payment in the future time, the contracts, and all matters, circumstances and things relating thereto, shall be given in evidence to the jury, whose verdict shall regulate the same, so that judgment may be entered up thereon. Proviso for a debt in the present time and payment in future.

5. *And be it further enacted*, That all justices of the peace, on trial of warrants brought before them, or any of them, shall give judgment and award execution according to the foregoing scale of depreciation, and agreeable to the true intent and meaning of this act. Justices of the peace to decide according to the scale.

6. *And be it further enacted*, That on all pleas of tender, with an always ready, alledged to be made after the last day of March, one thousand seven hundred and seventy-seven, the party pleading such plea shall file an affidavit therewith, that the sum so tendered was equal at the time of such tender to the debt or damage demanded, according to the then depreciation; and for the want of such affidavit the plaintiff shall be admitted to proceed on his writ in the usual course of practice, unless the defendant waves his said plea, and pleads to issue. Regulation as to pleas of tender in cases of depreciated money.

7. *Provided nevertheless*, That no creditor who hath before the said last day of March, in the year seventeen hundred and seventy-seven, refused to receive, or artfully evaded receiving his debt in currency, shall be entitled to have depreciation made good to him. Proviso where the paper currency was refused or evaded, before the last of March, 1777.

8. And whereas great injustice and injury may arise to many persons who may have claims to property, or de- Statute of limitations suspended, from the 4th

July, 1776, to
the 1st June,
1784.

mands on debtors, by reason of the courts of justice being often stopped, the depreciation of the paper currency, and the intrusion of a destructive war, creditors have been prevented from prosecuting for the same to any effect; that justice and equity may therein be done, *Be it enacted*, That the statute of limitations, entitled, an act concerning old titles to lands, and for limitations of actions, and for avoiding suits in law, be and is hereby suspended from its usual operation, so far forth as it acts, or might act, as an estoppel or impediment against the recovery of lands, tenements and hereditaments, or any of them, or the recovery of property by actions of detinue, trover and conversion, or demands against debtors, or suits in equity coming within the provisions and remedies of this act, from the fourth day of July, seventeen hundred and seventy-six, to the first day of June, seventeen hundred and eighty-four, that all persons may implead or be impleaded in that time, unless the said law had had the full operation thereof before the said fourth day of July, in the year aforesaid.

Particular cases
that may be
submitted by
consent to the
court of equity.

9. And whereas many great and difficult disputes may happen in matters of administration, testamentary, and trusts between executors, administrators and guardians, and their wards and minors, in the settlement of accounts and trusts, arising from the said depreciation, and incidents growing out of the times, which are only determinable in a court of equity; and that law suits and expensive litigation thereon may be obviated, *Be it enacted*, That in all such cases as above described, the parties are hereby empowered to form a full and perfect state of the case on both sides, at their joint expense, which case shall be submitted to the determination of the judges of the court of equity, who are hereby authorised to take such case under their consideration, and to determine the same according to equity and good conscience.

Proviso not to
prevent a due
course of law, if
either party
thinks proper.
And proviso for
part payment of
bond, &c. in pa-
per currency.

10. *Provided always*, and it is the intent hereof, That no part of this law shall be construed to estop, or hinder any person or persons from proceeding in the usual course of law, if he, she, or they shall deem the same necessary. *And provided also*, That in all cases where a debt is due, upon bond, note, or otherwise, with a penal sum, and a part thereof paid in paper currency, then and in that case, this act shall not enable or suffer the creditor to take any sum out of the penalty, or be construed to affect the residue of said debt; any thing to the contrary notwithstanding.

CHAP. 188.

An act to inhibit and put an end to the entering up judgments on bonds commonly called judgment bonds.

1. WHEREAS it hath been heretofore usual for persons to enter up judgments on old and dormant bonds and other writings, with powers to confess judgment thereon, by any practising attorney in any court of law, without previous notice to the debtor or debtors to make his defence, and enable such debtor or debtors to produce his or their releases, receipts and other acquittances, by means whereof much fraud hath been committed, and the good citizens burthened with heavy judgments and costs, without any relief but by an expensive course in equity: For prevention of such abuses in future,

Preamble.

The usual former practice.

2. *Be it therefore enacted, &c.* That from and after the passing of this act, all judgment bonds, notes and other writings, with power to any person whatever to confess judgment thereon, shall be and are hereby declared utterly void as to such power, but the same proceedings shall be had thereon, as on common bonds and penal notes.

Judgment bonds, &c. declared void as to the power of entering up judgment.

CHAP. 189.

An act to enforce the attendance of jurors in this state, to provide for their subsistence in attending, also to ascertain the pay of witnesses attending courts, and other purposes.

1. WHEREAS the above purposes have not hitherto been sufficiently provided for;

2. *Be it therefore enacted, &c.* That every juror who shall be hereafter appointed by any of the county courts within this state to attend at any of the superior courts, and shall fail to appear according to the summons, and give his attendance, shall forfeit and pay ten pounds specie; and every person appointed by, and duly summoned to attend any county court, who shall fail or neglect to attend such court as juror, shall forfeit and pay the sum of five pounds specie; (a) which forfeitures shall be assessed by the court to which such person shall be returned a juror, and recovered and applied as fines are directed in an act of assembly, entitled, An act to provide indifferent jury-men, &c. and appropriated to the same purposes as in the said act is directed. *Provided, That each delinquent juryman shall have till the next succeeding*

Penalty for non-attendance of jurors, 10*l.* in superior court, and 5*l.* in county court.

a [Altered by 1804, c. 664.]
How to be recovered.
[See 1779, c. 157.]
Time given for excuse.

a [See 1804, c. 664.]

Witnesses allowed.

b [Now 6s. if in the county, or 10s. if without, see 1806, c. 694, s. 9, & 1819, c. 1023.]

Inserted in the taxation of costs, party cast to pay only two witnesses, &c. How attendance to be ascertained.

Penalty for non-attendance as a talisman in any court.

c [Modified by 1796, c. 458.]

term to make his excuse to the judges or justices of the said court, as the case may be, for his non-attendance. (*a*)

3. *And be it further enacted*, That each person who shall attend any of the said superior or county courts as a witness, shall be allowed for each and every day's attendance, and for every thirty miles he shall travel going to and returning from the said court, the sum of eight shillings specie, (*b*) and for every day's attendance on the county court the sum of four shillings specie, to be paid by the party cast, and inserted by the clerk in the taxation of costs. *Provided*, That the party cast shall not be obliged to pay for more than two witnesses to prove any single fact; and the attendance of witnesses as to the number of days shall be ascertained by the oath of the witness, to be made at the court at which the cause is determined, or within five days after, before the clerk of the court. (*c*)

4. *And be it further enacted*, That when any person shall be summoned by the lawful officer to attend any of the aforesaid courts as a talisman, and who shall fail to appear and give his attendance during the day for which he is summoned, shall be amerced at the discretion of the court, not exceeding twenty shillings specie, and the court shall order the clerk forthwith to issue an execution against the body or goods of the delinquent for such amercement and costs.

CHAP. 190.

An act to amend an act passed in the year of our lord one thousand seven hundred and forty-one, entitled, an act concerning servants and slaves.

1. WHEREAS the mode directed in the said act for the trial of slaves where the offence may be of a small and trivial nature, is found to be attended with delay, great loss of time, and expense to the owner: For remedy whereof,

2. *Be it therefore enacted, &c.* That where any slave or slaves shall hereafter commit any misdemeanor or offence which is not by law declared capital, and which in the opinion of the justice or justices before whom such offending slave may be carried for examination, shall appear to be of so trivial a nature as not to deserve a greater punishment than a single (*d*) justice of the peace is by this

Slaves tried & punished for trivial offences, before a justice in a summary way.

d [1741, c. 35, s. 41.]

act empowered to inflict, such justice shall, and he is hereby authorised and empowered forthwith to issue *sub-pœnas* if necessary, to compel the attendance of witnesses, and proceed immediately upon the trial of such slave in a summary way, and to pass sentence and award execution; provided the punishment extends no further than by ordering the offender to be publicly whipped not exceeding forty lashes: and where the offence for which any slave shall be apprehended, shall appear to the justice or justices to be of such a nature as to deserve any other or greater punishment, such offending slave shall be committed to gaol, and stand his or her trial by a court in the way prescribed by the aforerecited act. (a)

a [See 1793, c. 381—1794, c. 412—1816, c. 912.]

3 *Provided*, That upon all trials of slaves before any justice of the peace, for any misdemeanor under this act, any other of the justices of the county where such slave may be upon trial, may if they think proper, sit upon and assist in the examination and trial.

And justice may assist in the trial.

CHAP. 191.

An act to amend an act passed at Newbern, the fifteenth day of November, in the year one thousand seven hundred and seventy-seven, for making provision for the poor, and other purposes.

[See 1777, c. 117—1786, c. 255, s. 3—1792, c. 361, s. 2—1793, c. 390—1798, c. 497, s. 3.]

1. WHEREAS it appears to this Assembly that the before recited act does not answer the good purposes that were thereby intended, whereby many of the poor people of this state, who are proper objects of charity are suffering for the want of necessary supplies for their support: (b)

b [This act provided for the laying of a tax, but is so far superseded by 1817, c. 945.]

2. *Be it therefore enacted, &c.* That all persons duly elected (wardens of the poor) and on notice from the sheriff refusing to qualify, shall forfeit and pay the sum of ten pounds specie, to be sued for and recovered in any court of record, by the county trustee, in an action of debt, and the money so recovered to be applied to the use of the county.

Penalty for refusing to qualify

3. *And be it further enacted*, That from and after the passing of this act, the overseers of the poor shall be styled and called Wardens of the Poor, and shall in every thing be under the same rules and regulations, and enjoy the same rights and privileges as the overseers of the poor heretofore have or might have had.

To be styled wardens of the poor.

4. *And be it further enacted*, That so much of the before

Repealing clause.

mentioned act as comes within the purview of this act, is hereby repealed and made void.

CHAP. 192.

See act 1782, c. 173. An additional act to an act, entitled, An act to establish a department for adjusting and liquidating the public accounts of this state, and for appointing a comptroller, and for other purposes.

Comptroller to administer an oath, &c. 1. *Be it enacted, &c.* That the comptroller be, and he is hereby empowered and authorised to administer an oath or affirmation to accountants and witnesses in support of the justice of such accounts as may be exhibited to him for liquidation, and certify the same accordingly. (a)

a [See 1787, c. 268.]
To grant certificates to accountants, &c.

(Absolute.)

2. *And be it further enacted,* That on every settlement by the comptroller made, where the balance shall appear to be due from the state to the accountant, the said comptroller shall certify under his hand the true state of such account, and the balance so due, and shall keep a fair copy of such certificate to be laid before the general assembly; and in virtue of such certificate the person to whom a balance may be due, shall have an equal claim against the public with those who have, or shall obtain auditor's certificates.

CHAP. 193.

An act to amend an act passed at Hillsborough, the twelfth day of May, in the year one thousand seven hundred and eighty-two, entitled, an act for the relief of persons who have suffered, or may suffer, by their deeds and mesne conveyances not being registered within the time heretofore appointed by law.

(See 1782, c. 174, s. 2. 1784, c. 203, s. 1.) 1. **WHEREAS** by the before recited act there is no provision for the registration of grants obtained for lands entered in the late land-office, under the present constitution; and whereas many good people may be greatly injured thereby;

Provision for grants of land entered which have not been duly registered. 2. *Be it therefore enacted,* That all grants for lands entered in the late land-office under the present constitution, which have not been registered within the times heretofore appointed by law, shall be admitted to registration, in the same manner, and under the same rules and regulations that deeds and mesne conveyances in virtue of the before recited act are, and shall be as good and valid as

if they had been registered within the time heretofore appointed by law, any thing to the contrary notwithstanding.

3. *And be it further enacted*, That all grants of lands obtained as aforesaid, and which have been registered since the expiration of the time by law appointed for their being registered, shall be as good and valid to all intents and purposes, as if they had been registered within the time aforesaid.

All registered heretofore to be valid.

CHAP. 194.

An act for facilitating the navigation (*a*) and regulating the pilotage of the several ports of this state.

1. WHEREAS the commerce of this state has been greatly injured by the imposition, extortion, insufficiency and negligence of pilots, and for want of staking out the channels within the ports of Bath-Town, Roanoke, Beaufort, and Brunswick: For remedy whereof, (*b*)

2. *Be it therefore enacted, &c.* That Nathan Keais, Thomas Alderson, Richard Blackledge, John Bonner and John Gray Blount, (*c*) esquires, be and are hereby appointed commissioners for port Bath; Josiah Collins, William Bennet, Nathaniel Allen, Joseph Blount and William Littlejohn, be and they are hereby appointed commissioners for port Roanoke; and Richard Ellis, James Green, Spiers Singleton, Thomas Ogden and John Jones, esquires, be and they are hereby appointed commissioners for port Beaufort; to contract with proper persons to examine from time to time the situation of the Swash, and to keep the same and all other channels leading from Occacock bar to Washington, Edenton and Newbern, well and sufficiently staked out, and to erect beacons at Occacock, Beacon-Island, Coor-Banks, and all other such places as the said commissioners shall think most convenient for the safety of vessels. (*d*)

3. *And be it further enacted*, That the said commissioners, or a majority of them in each respective port, shall have full power and authority to examine pilots touching their qualifications, and upon their approbation to grant them a certificate or certificates to pilot vessels in all or any of the respective ports aforesaid; and in case any

a (So much of this act as respects a tax on vessels and the appointment of receivers, is superseded by the adoption of the federal constitution.)

Commissioners appointed.

b (See 1784, c. 207, 208. 1786, c. 262. 1790, c. 320. 1792, c. 371. 1794, c. 426. 1796, c. 470. 1797, c. 486. 1805, c. 691. 1812, c. 839.)

d (See 1785, c. 234.)

Pilots may be examined and approved, (See 1784, c. 207, s. 2.)

c (See 1801, c. 600, and post, s. 7.)

Penalty for acting without certificate.

person shall pretend to pilot or take charge of any ship or vessel without having passed an examination as aforesaid, and obtained a certificate for so doing, and also giving bond in manner as is hereafter directed, shall forfeit and pay for each and every offence the sum of twenty pounds specie.

Pilots to give bond.

4. *And be it further enacted*, That all pilots heretofore appointed, or that shall be hereafter appointed, shall give bond in the sum of one hundred pounds specie, with two good and sufficient securities to the respective commissioners of the several ports before mentioned, in which they shall act as pilots, conditioned for the true and faithful discharge of their duty.

Pilots' pay, if driven off the coast after boarding.
(See 1784, c. 207, s. 8.)

5. *And be it further enacted*, That if any ship or vessel coming into the said inlet of Occacock, and taking a pilot on board, shall be by contrary winds or otherwise drove off the coast, the master or owner of such vessel shall allow and pay the said pilot three shillings and six pence specie *per day*, for each and every day he shall be on board the said vessel, over and above his pilotage.

Penalty for refusing to go to vessel having a signal for a pilot.
(See 1784, c. 207, s. 10.)

6. *And be it further enacted*, That when any branch-pilot shall see any vessel on the coast, having a signal for a pilot, and shall neglect or refuse to go to the assistance of such vessel, on proper proof being made of such neglect or refusal, shall forfeit and pay the sum of twenty pounds specie, to be recovered by action of debt in any court of record in this state, the one half to the informer and the other half to the master or owner of said ship or vessel.

Commissioners may fill up vacancies in their own body.

7. *And be it further enacted*, That upon the death, removal or refusal of any of the said commissioners to act, the remaining commissioners of each respective port shall and may choose and appoint another commissioner in the said port, in the room of the commissioner so dying, removing or refusing to act.

Penalty for throwing ballast overboard, or destroying beacons, &c.

8. *And be it further enacted*, That no master or other persons belonging to any vessel trading to this state, shall cast or throw overboard into any channel or rivers within this state (a) any stones or other ballast whatsoever, any oysters or oyster-shells, under the penalty of one hundred pounds specie for every such offence; and if any person or persons shall wilfully pull down any beacon, stake or other mark, erected or placed in virtue

L. 2 (See 1784, c. 207, s. 11 and 13.)

of this act, he or they shall for every such offence forfeit and pay fifty pounds specie.

9. *And be it further enacted*, That the said commissioners as often as they are required, shall account with the general assembly for such money as shall be by them from time to time respectively received, and shall have such allowance for their expenses actually disbursed as shall appear reasonable.

Commissioners to account with the general assembly.

10. *And be it further enacted*, That each and every fine imposed by this act, shall be recovered by action of debt in any court of record having cognizance thereof, one half to the person suing for the same, the other half to the commissioners where the offence shall be committed, to be by them applied toward staking out the channel as aforesaid.

Fines how to be recovered and applied.

11. *And be it further enacted*, That John Easton, David Cooper, Enoch Ward, William Thompson and Malachi Bell, esquires, be and are hereby appointed commissioners for Old-Topsail Inlet Navigation, and are hereby vested with all the powers and authorities with respect to the pilots and pilotage of the said Old-Topsail Inlet and its navigation, which are given to the other commissioners by this act appointed.

Commissioners for Old-Topsail.

12. *And be it further enacted*, That when any ship or vessel shall arrive in any of the ports in this state, with the small-pox or other infectious disorder on board, the master and pilot of such ship or vessel shall give immediate information thereof to the commissioners of navigation of the port at which they arrive, and the said commissioners or any three of them are hereby empowered and directed to order and command the master of such ship or vessel to perform *quarantine* with his said ship or vessel at such place and for as many days as they may think necessary; and if the said pilot or master shall neglect or refuse to give such information, the pilot for such neglect shall forfeit and pay the sum of fifty pounds specie, and the master for the like neglect shall forfeit and pay the sum of one hundred pounds specie; and in case the master of any ship or vessel having any infectious disorder on board, shall refuse to comply with or fail to fulfil the orders of the commissioners for performing *quarantine* with his vessel as aforesaid, he shall forfeit and pay the sum of five hundred pounds specie, to be recovered by action of debt in any court of record in this state having cognizance thereof, to be applied in

The master of an infectious vessel to perform quarantine.

Penalty for not giving information.

Penalty for refusing to perform quarantine.

a (See 1784, c. 207, s. 12, 1797, c. 486, s. 2.) the same manner as other fines are in this act direct-
ed. (*a*)

Repealing
clause.

13. *And be it further enacted*, That all and every act and acts of assembly, or any clause or clauses of acts coming within the purview of this act, and not herein particularly confirmed, be and the same are hereby repealed and declared void and of no effect.

Read three times, and ratified in General Assembly, }
the 17th day of May, A. D. 1783. }

SIGNED BY

RICHARD CASWELL, S. S.

EDWARD STARKEY, S. C.

Alexander Martin, esquire, governor.

At a General Assembly, begun and held at Hillsborough, on the nineteenth day of April, in the year of our Lord one thousand seven hundred and eighty-four, and in the eighth year of the independence of the said state : Being the first session of this Assembly.

CHAP. 195.

An act to amend an act, entitled, An act for ascertaining what property in this state shall be deemed taxable property, the method of assessing the same, and collecting public taxes.

Inhabitants how
to give in their
lists.

1. *Be it enacted, &c.* That the inhabitants of the respective districts in each county shall attend at the time and place to be appointed, (*b*) and shall return on oath (*c*) in writing to the justice appointed to receive the same, the quantity of land, the particular tracts, the counties in which the same lie, with the number of free males and servants twenty-one years old and upwards, the number of slaves male and female between the age of twelve and fifty years, which to him belonged, or who lived in his family, and the number of town lots of which he was possessed on the first day of April then last past ; and the oath to be administered by the justice receiving such lists shall be as follows :

Their oath.

You , do swear or affirm (as the case may be) that this list by you delivered, contains a just and true account of all the property for which by law you are

b (See 1801, c. 570, s. 1 and 2.)

c (See 1788, c. 282, and 1819, c. 999.)

subject to pay taxes, to the best of your knowledge and belief. So help you God.

2. And whereas there are generally in the towns of this state, lots and improvements the property of persons living at a distance, or without the bounds of such towns, by reason of which such property if returned only by the proprietors would not come to the hands of the assessors; for remedy whereof, *Be it enacted*, That all property in the several towns shall be returned by the tenants or occupiers thereof, unless returned by the proprietors thereof, or the agent, attorney, trustee or guardian of the proprietor; and when returned by the tenant or occupier, such tenant or occupier shall be liable to pay the taxes thereon assessed, but the absent owner or person in whose care the same shall be, shall nevertheless return such lots in his general return, specifying at the same time in whose actual possession, or under whose immediate superintendency the same may be.

Tenants or occupiers of town lots to give them in, &c.

3. *And be it further enacted*, That the justices who shall be appointed to receive the lists of taxable property and the assessors (a) in every town shall make fair returns of their lists and assessments respectively to their respective county courts next after such lists shall be received and assessments made, and the justices shall in their return (exclusive of the original lists received by them) distinguish the persons' names, the several tracts of land, the quantity and situation of each tract, the town lots, and number of polls white and black, in the following manner, viz.

All lists and assessments to be returned to the county court.

a (Repealed as to assessors, and modified by 1819, c. 999, s. 1.

Amount of each person's taxable property.	Number of black polls.	Number of free polls.	Value of Town lots, with improvements.	Town Lots.	Situation or place where each tract lies.	Quantity in each tract.	Persons' Names.
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Property how distinguished.

4. *And be it further enacted*, That the clerk of each court shall record at large in alphabetical order, the annual returns to be made by the justices and assessors (b) in his county, and the court shall and may make a rea-

Clerks to record the returns of the justices.

b (Assessors done away. See 1819, c. 999, s. 11.)

Penalty for neglect.

Penalty on persons failing to return lists.

The justices appointed to receive lists how to give in their own.

County court may remit the penalties of this act.

Justices to be appointed to receive lists annually.

a (See 1801, c. 570, s. 2.)

Clerks to furnish them with lists of the preceding year.

sonable allowance for such service, to be paid out of the county tax; and if any person appointed to receive lists of taxable property, or to assess town lots, shall fail or neglect to discharge the duty of his appointment, the person so failing or neglecting shall forfeit and pay the sum of one hundred pounds, to be recovered in any court of record having cognizance thereof, in the name of the governor, to the use of the state; and if any master or mistress of a family, his or her agents, factors, managers or attornies, after due notice given as before directed, shall fail or neglect to attend and return inventories for his or her taxable property in manner before mentioned, each and every person so failing shall forfeit and pay the sum of fifty pounds, to be recovered and applied as in the case last mentioned, and the person so failing or neglecting shall pay a double tax, the number of polls belonging to the person neglecting as aforesaid to be reported by the justice to the best of his knowledge: and if any executor, administrator, guardian, trustee, agent or attorney, shall after due notice fail to return an inventory to the justice appointed to receive the same of the taxable property in his trust or possession, the property of the testator, intestate, minor or absentee, shall be liable to a double tax, and the justice shall report the same to the best of his knowledge or information; and such double tax shall be levied of the proper estate of such executor, administrator, guardian, trustee, agent or attorney.

5. *And be it further enacted*, That the several justices appointed to receive lists of taxables, shall make return of their own lists to the county court, or to some other justice.

6. *And be it further enacted*, That any person incurring any of the penalties in this act mentioned for omitting to return his list of taxable property, may apply to the county court to which the list shall be returned, or to the next succeeding court, and such court upon sufficient reasons shewn may remit the penalties.

7. *And be it further enacted*, That at the first court in every county to be held next after the first day of April, in every year after the present, such court shall appoint a justice of the peace for each district in the county to receive lists of taxable property for the then present year, (a) and the clerk of each county court shall furnish each justice within twenty days after his appointment, with a fair alphabetical copy at large of the list of

taxable property within his district the preceding year, under the penalty of ten pounds for each neglect, to be recovered by action of debt in the governor's name, in any court having cognizance thereof, and to be applied to the use of the state.

CHAP. 196.

An act to prevent doubts as to the right of sovereignty and jurisdiction in and over the territory lying west of the Apalachian mountains, for shutting the land-office, and for indemnifying John Armstrong, esq. entry-taker, against vexatious suits for his conduct in office.

1. WHEREAS the general assembly by act passed this session, has ceded on certain conditions therein mentioned, to the United States in congress, all the territory which belonged to this state lying west of the Apalachian or Alleghany mountains; and whereas doubts may arise with respect to the sovereignty and jurisdiction of the territory aforesaid until the United States in congress shall accept or refuse the cession: (Obsolete.)

2. *Be it enacted, &c.* That the sovereignty and jurisdiction of this state in and over the territory aforesaid, and all and every the inhabitants thereof, shall be and remain the same in all respects until the United States in congress shall accept the cession, as if the act aforesaid had never passed. (a) Right of sovereignty retained till the acceptance of the cession. (Obsolete.)

3. And whereas it is just and right that no further entries of lands within the territory aforesaid should be allowed until the United States in congress refuse the cession aforesaid, *Be it enacted,* That the said office be and the same is hereby discontinued; and that all entries of lands in the said territory made since the 25th day of May, 1784, or which shall hereafter be made in the said office of John Armstrong, shall be and they are hereby declared void, except such entries of lands as shall be made by the commissioners, agents and surveyors who extended the lines of the lands allotted to the continental officers and soldiers, and the guards and hunters, chain-carriers and markers who attended the said commissioners; which entries shall and may be received by the said John Armstrong agreeable to the report of the committee, and proceedings had thereon in the same manner as if this act had not passed; and that the said John Armstrong shall not be liable to the action of any person or

a (See 1789, c. 299.)

Land-office shut and certain entries disannulled.

Exceptions.

(Obsolete.)

persons for damages, or to any fine or penalty for refusing to receive any entry or entries of lands except the entries to be made for the lands last above mentioned, lying in the territory aforesaid, on the said 25th day of May, or at any time since, any law to the contrary notwithstanding.

CHAP. 197.

S^{ee} 1783, c. 185, and acts there referred to. An act to amend an act, entitled, an act for opening the land-office, for the redemption of specie and other certificates, and for discharging the arrears due to the army.

Armstrong's entry office.

1. **WHEREAS** by the said act no mode is pointed out for appointing a surveyor or surveyors for surveying the lands entered in the general entry-office kept by col. John Armstrong:

Three surveyors appointed.

2. *Be it enacted, &c.* That three surveyors be appointed by joint ballot of both houses to survey the said lands, viz. one to survey those lands that lie between the bounds hereafter described for the surveyor of Greene county and Cumberland mountain, one to survey those lands that lie between the Cumberland mountain and the river Tennessee, and one to survey those lands that lie between the Tennessee and the Mississippi river, who shall each of them give bond with sufficient security in the penal sum of ten thousand pounds, payable to his excellency the governor and his successors in office, for the faithful discharge of his duty agreeable to law; which said bond shall be deposited in the secretary's office, and upon breach of the condition of the said bond, the same shall be assigned by the governor to the party or parties injured, who may maintain an action thereon in his or their name, and no such bond shall become void upon its recovery, or if judgment shall be given for the defendant, but may be put in suit and prosecuted from time to time until the whole penalty shall be recovered.

[Obsolete.]

Who are to give bond with security, &c.

Surveyors to appoint assistant surveyors, and to be answerable for their conduct.

[Obsolete.]

3. *And be it further enacted,* That the surveyors elected by joint ballot of both houses as aforesaid, shall have power, and are hereby authorised to appoint one or more assistant surveyors to assist them in their respective districts in the execution of their offices, for whose conduct the said surveyors so elected by joint ballot of both houses shall be respectively answerable as for their own.

4. *And to prevent disputes respecting the bounds allor-*

ted to the surveyor of Greene county, *Be it enacted*, That the surveyor of Greene county is hereby authorised to survey all lands for which warrants have been or may be granted by colonel John Armstrong, entry-taker at Hillsborough, lying westward of the Apalachian mountains, and including all the lands on the waters of Holstein, from the mouth of French Broad river upwards to the bounds of Washington and Sullivan counties, exclusive of the entries made by the entry-taker of Greene county; any thing in any law to the contrary notwithstanding.

Bounds allotted the surveyor of Greene county.

[Obsolete.]

5. *And be it further enacted*, That all tracts of land shall be laid off and surveyed in a square or oblong form, as the law directs, and every survey shall be on the lands entered and as nearly as may be agreeable to the locations thereof; and in case any entry shall be made for lands which have been previously granted or entered and located, the surveyor shall and he is hereby authorised to survey the quantity on any vacant lands in this state, which may be located or described by the person who made the entry, or any other person authorised for that purpose.

Surveys how to be made.

[Obsolete.]

Locations shifted.

CHAP. 198.

An act to amend an act, entitled, an act for the relief of the officers and soldiers of the continental line, and for other purposes.

1. *Be it enacted, &c.* That the surveyor appointed by the act aforesaid to survey the lands granted to the officers and soldiers of the continental line of this state, shall keep a proper book, wherein he shall enter all locations of lands which have been made agreeable to law, and therein shall insert the name of the person, the number of the location, number of the warrant, quantity of acres, when located, and description of the location, in the following manner:

Descriptive books to be kept by the surveyor.

[Obsolete.]

Persons' names.	No. of the warrant.	No. of the location.	Quantity of acres.	When located.	Description.
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2. *And be it further enacted*, That from and after the passing of this act the office of the said surveyor shall be kept at Nashville, in Davidson county, and conducted under the regulations and upon the principles aforementioned, and thereafter no locations made elsewhere shall be deemed valid.

His office kept at Nashville.

[Obsolete.]

Lands how to
be run out.

[Obsolete.]

Proviso.

3. *And be it further enacted*, That any officer having a warrant for lands, may have the same surveyed in one tract; and each and every tract surveyed for officers or soldiers, shall be run out at the four cardinal points of the compass, either in a square or in an oblong, which last shall in no case be more than twice as long as it is broad, and no survey of less than one thousand acres, whether the same be made for any officer or soldier, or for any person on account of pre-emption or guard-right, shall be extended across any river or creek where the same is navigable for batteaux. *Provided*, That when a mountain, river or creek shall interfere in any survey, one side of such survey may be bounded by such mountain, river or creek, and the other three sides shall be run out at the cardinal points.

CHAP. 199.

An act for the relief of such persons as have been disabled by wounds, or rendered incapable of procuring for themselves and families subsistence, in the militia service of this state, and providing for the widows and orphans of such as have died.

Disabled persons to apply to the county courts.

1. *BE it enacted, &c.* That from and after the passing this act, that every person who shall come within the above description shall apply to the court of the county in which he or they shall reside, which court on such application shall certify to the general assembly the distresses of such person or persons, who shall have an allowance adequate to their relief for one year, which allowance shall be continued for the next succeeding year, and so long as such court shall certify such person to continue under the description aforesaid; which order or certificate of court being countersigned by the speakers of the general assembly, shall be a sufficient voucher to any sheriff, collector, or treasurer paying the same, in the settlement of their public accounts.

Also their widows and orphans.

2. *And be it further enacted*, That the widows and orphans of such persons as come within the above description, shall be entitled to obtain relief on application to the county court, in the same manner as those disabled persons before mentioned.

CHAP. 200.

An act for the relief of such persons who have through misapprehension entered their lands in a different county from that wherein they lie, by which means they are deprived of a legal title; for remedy whereof,

1. *BE it enacted, &c.* That all such entries shall be as good and valid in law as if they had been made in the proper office of the county wherein they lie; and it shall and may be lawful for the surveyor or surveyors who may have the warrants in possession, to lay out and survey the said lands so entered, and make returns thereof to the secretary's office, who is hereby required to issue grants for the same, under the like rules, regulations and restrictions, as prescribed by law; and all such titles heretofore granted or hereafter to be granted, shall be good and valid in law, to secure the property to the grantee, to all intents and purposes as if the said lands had been entered with the entry-taker of the county wherein they lie, any law, usage or custom to the contrary notwithstanding: *Provided*, That this act shall extend only to the counties of New-Hanover and Brunswick: *And provided also*, That no persons shall take any benefit by this act, unless the lands entered were generally conceived to be within the county where such entries may have been made, and the persons making such entries shall have performed public duties, and paid public taxes in such counties, as inhabitants thereof, before the time of making such entries.

Titles made good for land entered by mistake in the wrong county.

Applicable only to New-Hanover and Brunswick counties. Proviso.

CHAP. 201.

An act to describe the lands granted to major-general Nathaniel Greene, and to confirm the title thereof, to the said Nathaniel Greene, his heirs and assigns forever.

Description, &c. of land given to Gen. Greene.

1. WHEREAS the general assembly by an act passed in April and May session, seventeen hundred and eighty two, entitled, An act for the relief of the officers and soldiers in the continental line, and for other purposes therein mentioned, did allot and give to the said Nathaniel Greene, (a) his heirs and assigns, twenty-five thousand acres of land, as a mark of their high sense of the extraordinary services of the said Nathaniel Greene; and directed the same to be laid off by the commissioners by the said act appointed, within the bounds of the lands reserved for the army: And whereas Absalom Tatom, Isaac Shel-

a [See 1782, c. 173, s. 5.]

by and Anthony Bledsoe, commissioners appointed by the said act to examine and superintend the laying off the lands reserved for the use of the army in pursuance of the said act ; and agreeable thereto did lay off and survey, or cause to be laid off and surveyed, twenty-five thousand acres of land for the said Nathaniel Greene, a plat of which was duly returned, and now is among the public papers, bounded as follows ; beginning on the south bank of Duck river, on a sycamore, cherry-tree and ash, at the mouth of a small branch, running thence along a line of marked trees, south seven miles and forty-eight poles to two Spanish oaks, a hickory and sugar sapling, thence east six miles and ninety polls to a Spanish oak and hackberry tree, north three miles and three hundred poles to a sugar tree sapling, and two white oak saplings, under a clift of Duck river, where it comes from the north-east, thence down Duck river according to its several meanders to the beginning :

Lands vested
and the gover-
nor to execute a
deed.

2. *Be it therefore enacted, &c.* That the absolute property of the land so laid off by the commissioners, and included in the bounds above mentioned, be and it is hereby vested in fee simple in the said Nathaniel Greene, his heirs and assigns forever ; and his excellency the governor is hereby directed to make out and execute without delay, on behalf of the state, a good and sufficient grant, with the seal of the state annexed in due form, to the said Nathaniel Greene, his heirs and assigns, for the lands above described, and to cause the same to be recorded or registered in the proper offices, and then to transmit the said grant as soon as may be to the said Nathaniel Greene.

Entries of this
tract of land, or
any part of it,
declared void.

3. *And be it further enacted,* That all entries, warrants, surveys and grants, which have been made or obtained subsequent to March, the eleventh, seventeen hundred and eighty-three, the date of the return of the survey of said Nathaniel Greene's lands, or shall be hereafter made or obtained by any other person or persons for the said lands, or any part thereof, shall be and they and every of them are hereby declared utterly void, any law to the contrary notwithstanding.

CHAP. 202.

An act to empower the county surveyors to make surveys and returns in the manner therein mentioned.

1. WHEREAS it has been found impracticable to survey most of the entries of lands made in and adjoining the large swamps in the eastern parts of this state, agreeable to the manner directed by the acts now in force, (a) without putting the persons entering the same to great and unnecessary expense ; for remedy whereof,
2. *Be it therefore enacted, &c.* That it shall and may be lawful for the surveyors, or any of them in the eastern parts of this state, and they, or either of them, are hereby empowered and required to survey for any person or persons whosoever, his or their entries of land already made, or that hereafter may be made in or adjoining any of the great swamps, (be the number of entries more or less) in one entire survey, and return the same to the secretary's office, who is hereby empowered and required to make out a grant or grants for the same, agreeable to such return: *Provided*, That the entries so border on each other as to render this mode more practicable than to survey the same separately.
3. *And be it further enacted*, That where two or more persons shall have entered, or may hereafter enter lands jointly, or where two or more persons agree to have their entries surveyed jointly in one or more surveys, the surveyor is hereby empowered and required to survey the same accordingly in one entire survey ; and the persons so agreeing to have their entries surveyed, or entering lands jointly, shall hold the same as tenants in common, and not as joint tenants.
4. *And be it further enacted*, That the owner or owners of lands surveyed in manner aforesaid, shall be obliged to pay to the surveyor or surveyors and secretary, the same fees as are allowed by law for other lands.
5. *And be it further enacted*, That so much of any act or acts now in force in this state as comes within the purview and meaning of this act, shall be and the same is hereby repealed and made void.

Preamble.

a (See 1777, c. 114, s. 3 and 10, and the acts there referred to.)

Surveyors may include many entries in the same survey on the great swamps in the eastern parts of the state.

Joint entries surveyed jointly.

Fees allowed in such cases.

Repealing clause.

CHAP. 203.

An act for the relief of persons who have suffered or may suffer by their grants, deeds, and mesne conveyances not being proved and registered within the time heretofore appointed by law.

Further time allowed for registering, &c. grants for lands entered in the late land-office.

(See 1780, c. 165, s. 3, 1783, c. 185, s. 14, and c. 193, 1786, c. 257, s. 6.)

Further time allowed for registering, &c. deeds not already registered.

(See 1782, c. 174, s. 2, and 1786, c. 257, s. 6.)

Exception as to grants in Lord Granville's office.

Probates how to be obtained when the grantors or witnesses have removed, &c.

1. *Be it enacted, &c.* That all grants for lands entered in the late land-office, under the present constitution, which have not been registered within the times heretofore appointed by law, shall and may within two years after the passing of this act be admitted to registration, and shall be as good and valid as if they had been registered within the time aforesaid; and all grants for lands obtained as aforesaid, which have been registered since the expiration of the time by law appointed for their being registered, shall be as good and valid to all intents and purposes as if they had been registered within the time aforesaid, any law to the contrary notwithstanding.

2. *And be it further enacted,* That all deeds and mesne conveyances of lands, tenements, and hereditaments not already registered, acknowledged or proved, shall and may within two years after the passing of this act be acknowledged by the grantor or grantors, his or their agents or attornies, or proved by one or more of the subscribing witnesses to the same, and tendered or delivered to the registers of the counties where such lands, tenements or hereditaments are respectively situated; and all deeds and mesne conveyances whatsoever which shall be acknowledged or proved according to the directions of this act, though not within two years after the date of such conveyance, shall be good and valid in law, and shall enure and take effect as fully and effectually to the use and behoof of the grantees, their heirs and assigns, and those claiming under them, as if such deed and conveyance had been acknowledged or proved, and registered agreeable to the directions of any law heretofore made: *Provided,* That nothing in this act contained shall be construed so as to admit to record or registration, or ratify and enforce any grant or grants heretofore made in lord Granville's office.

3. And where any purchase of land hath been made within this state since which time the grantor or grantors, or the subscribing witnesses have removed themselves out of the county where such land lies, *Be it enacted,* That if any person or persons under the before mentioned circumstances shall make it appear to the satisfaction of the county court of the county in which such land may lie,

the said court is hereby empowered to grant a *dedimus* (a) directed to some justice of the peace in the county or state where such grantor or grantors, or any of the subscribing witnesses may be, empowering the said justice to take the acknowledgement or probate of such deed or deeds, and requiring him to certify the same under his hand and seal, directed to the said county court, setting forth that such deed or deeds have either been acknowledged by the grantor or grantors, or otherwise proved by the oath of one or more of the subscribing witnesses; then and in that case such county court is hereby empowered to admit such deed or deeds to record and registry, which shall be as valid in law as if the same had been acknowledged or proved in open court of said county, any law to the contrary notwithstanding.

a [See 1756, c. 58, s. 4—1808, c. 762, s. 2—1810, c. 803, s. 2—1816, c. 927—1715, c. 7. s. 3.]

CHAP. 204.

An act to regulate the descent of real estates, to do away entails, to make provision for widows, and to prevent frauds in the execution of last wills and testaments.

[See 1784, c. 225—1795, c. 435—1801, c. 375—1808, c. 739—1799, c. 522.]

1. **WHEREAS** it will tend to promote that equality of property which is of the spirit and principle of a genuine republic, that the real estates of persons dying intestate should undergo a more general and equal distribution than has hitherto prevailed in this state:

2. *Be it therefore enacted, &c.* That when any person shall die seized or possessed of, or having any right, title or interest in and to any estate, or inheritance, of land, or other real estate in fee simple, and such person shall die intestate, his or her estate or inheritance shall descend in the following manner, *to wit*, to all the sons (b) to be equally divided amongst them, and for want of sons, to all the daughters to be divided amongst them equally, share and share alike, as tenants in common in severalty, and not as joint tenants, other than such son or daughter as shall have lands settled on him or her by his or her deceased parent in fee-simple, equal to the share which shall descend to the other sons or daughters, as the case may be, respectively; and in case any son or daughter shall have lands settled on him or her by his or her deceased parent, not equal to the share which shall descend to such sons or daughters, as the case may be, respectively as aforesaid, then so much of the lands or other real estate of the deceased shall descend to such son or daughter, so provided

Lineal descents.

b [And daughters, see 1795, c. 435.]

Exception in the case of a child preferred.

Proviso where
a child of the
intestate died in
the intestate's
lifetime.

for, as will make the estates of all the children entitled by this act to the inheritance, as nearly equal as can be estimated; and each and every of the children of the deceased so inheriting, shall have, hold and enjoy, in the land so descending, such estate as the said deceased had and held in the same at the time of his decease: *Provided always*, That if any child of such intestate shall have died in the lifetime of the parent, his or her lineal descendants shall be held to represent their parent, and shall stand in the same place he or she would have done, and shall be entitled to the same portion of the estate of their grandfather or grand-mother, as their father or mother would have been entitled to if living; such part or portion to be divided amongst the sons, and for want of sons among the daughters, as tenants in common in severalty, and not as joint tenants.

Collateral de-
scents.

3. And whereas it is almost peculiar to the law of Great-Britain, and founded in principles of the feudal system, which no longer apply in that government, and can never apply in this state, that the half-blood should be excluded from the inheritance, *Be it therefore enacted*, That if any person dying intestate should at the time of his or her death be seized or possessed of, or have any right, title or interest, in or to any estate or inheritance in lands or other real estate in fee-simple, and without issue, such estate or inheritance shall descend to his or her brothers, (*a*) and for want of brothers, to his or her sisters, as well those of half-blood as those of whole blood; to be divided amongst them equally, share and share alike, as tenants in common and not as joint tenants, and each and every of them shall have, hold and enjoy in their respective parts or portions such estate or inheritance as the intestate died seized or possessed of, or entitled unto: *Provided always*, That when the estate shall have descended on the part of the father, and the issue to whom such inheritance shall have descended shall die without issue, male or female, but having brothers or sisters of the paternal side of the half blood, and brothers and sisters of the maternal line, also of the half-blood, such brothers and sisters respectively of the paternal line shall inherit in the same manner as brothers and sisters of the whole-blood, until such paternal line is exhausted of the half-blood; and the same rule of descent and inheritance shall prevail amongst the half-blood of the maternal line under similar circumstances, to the exclusion of the pa-

a [See 1784, c.
225, s. 2, & 1795,
c. 435.]

Proviso for
brothers or
sisters of half
blood where no
issue..

teral line : (a) *Provided also*, That if any brother or sister of the intestate shall have died in the lifetime of the intestate, leaving issue male or female, such issue shall represent their deceased parent, and stand in the same place he or she would have done if living, and shall be entitled to the same part or portion of the estate of his or their uncle or aunt, as his or their father or mother would have been entitled unto if living, such part or portion to be divided amongst such representatives, if more than one, among all the sons, and for want of sons among all the daughters equally, share and share alike, as tenants in common, and not as joint tenants.

Issue of a deceased brother or sister entitled to the ancestor's part.

a [See 1784, c. 225, § 2.]

4. *And be it further enacted*, That the same rules of descent shall be observed in lineal descendants and collaterals respectively, when the lineal descendants shall be further removed from their ancestor than grand-children, and when the collaterals shall be further removed than the children of brothers and sisters.

Same rules with respect to remote descendants and collaterals.

5. And whereas entails of estates tend only to raise the wealth and importance of particular families and individuals, giving them an unequal and undue influence in a republic, and prove in manifold instances the source of great contention and injustice, (b) *Be it therefore enacted*, That from and after the ratification of this act, any person seized or possessed of an estate in general or special tail, whether by purchase or descent, shall be held and deemed to be seized and possessed of the same in fee-simple, fully and absolutely, without any condition or limitation whatsoever, to him, his heirs and assigns forever, and shall have full power and authority to sell or devise the same as he shall think proper, and such estate shall descend under the same rules as other estates in fee-simple; and all sales and conveyances made *bona fide*, and for valuable consideration, since the first day of January, in the year of our Lord one thousand seven hundred and seventy-seven, by any tenant in tail, in actual possession of any real estate, where such estate hath been conveyed in fee-simple, shall be good and effectual in law to bar any tenant or tenants in tail, and tenants in remainder of and from all claim and claims, action and actions, and right of entry whatsoever, of, in and to such entailed estate, against any purchaser, his heirs or assigns, now in actual possession of such estate, in the same manner as if such tenant in tail had possessed the same in fee-simple.

Tenants in tail made tenants in fee-simple.

b [See 1749, c. 46]

Bona-fide sales & conveyances by tenant in tail in possession in fee-simple, held to convey a right in fee-simple.

In joint tenancy the heirs, &c. of one dying entitled as on a tenancy in common.

Exception for a particular purpose, as to partnerships in trade.

Parent to inherit where no brother or sister or the issue of such is living.

Particular manner in which the estate shall be vested.

a [See 1784, c. 225, s. 3.]

6. And whereas in real and personal estates held in joint tenancy, the benefit of survivorship is a manifest injustice to the families of such as may happen to die first: *Be it therefore enacted*, That in all estates, real and personal, held in joint tenancy, the part or share of any tenant dying shall not for the future descend or go to the surviving tenant or tenants, but shall descend or be vested in the heirs, executors, administrators or assigns respectively of the tenant so dying, in the same manner as estates held by tenancy in common, any law, usage or custom to the contrary notwithstanding: *Provided always*, That estates held in joint tenancy for the purposes of carrying on and promoting trade and commerce, or any other useful work or manufacture established and pursued with a view of profit to the parties therein concerned, shall be vested in the surviving partner or partners, in order to enable him or them to settle and adjust the partnership business and pay off the debts which may have been contracted in pursuit of the said joint business; but as soon as the same shall be effected, the survivor or survivors shall account with and pay and deliver to the heirs, executors, administrators and assigns respectively of the deceased partner or partners, all such part, share and sums of money, as he or they may be entitled to by virtue of the original agreement if any, or according to his or their share or part in the joint concern, in the same manner as partnership stock is usually settled between joint merchants and the representatives of their deceased partners.

7. And whereas by the law of descents as it now stands, when any person seized of a real estate in fee-simple, dies intestate without issue, and not having any brother or sister, such estate descends to some collateral relation, notwithstanding that the intestate may have parents living, a doctrine grounded upon a maxim of law not founded in reason, and often iniquitous in its consequences; *Be it therefore enacted*, That in case of any person dying intestate, possessed of an estate of inheritance without leaving any issue, or not having any brother or sister, or the lawful issue of such who shall survive, the estate of such intestate shall be vested in fee-simple, in his or her parent, from whom the same was derived; or if such estate was actually purchased or otherwise acquired by such intestate, then the same shall be vested in the father of such intestate if living, (*a*) but if dead, then in the

mother of such intestate and her heirs, and if the mother of the intestate should be dead, then in the heirs of such intestate on the part of the father, and for want of heirs on the part of the father, then to the heirs of the intestate on the part of the mother.

8. And whereas the dower allotted by law in lands for widows in the present unimproved state of this country, is a very inadequate provision for the support of such widows, and it is highly just and reasonable that those who by their prudence, economy and industry, have contributed to raise up an estate to their husbands, should be entitled to share in it; *Be it therefore enacted*, That if any person shall die intestate, or shall make his last will and testament, and not therein make any express provision for his wife, (a) by giving and devising unto her such part or parcel of his real or personal estate, or to some other for her use, as shall be fully satisfactory to her, such widow may signify her dissent thereto, before the judges of the superior court, or in the court of the county wherein she resides, in open court, within six months after the probate of the said will, and then and in that case, she shall be entitled to dower in the following manner, *to wit*, one-third part of all the lands, and tenements and hereditaments, of which her husband died seized or possessed. *Provided always*, That any conveyances made fraudulently to children or otherwise, with an intention to defeat the widow of the dower hereby allotted, shall be held and deemed to be void, and such widow shall be entitled to dower in such land so fraudulently conveyed, as if no conveyance had been made, which said third part shall be and enure to her own proper use, benefit and behoof, for and during the term of her natural life; in which said third part shall be comprehended the dwelling-house in which the said husband shall have been accustomed most generally to dwell next before his death, and commonly called the mansion-house, together with the offices, out-houses, buildings and other improvements thereunto belonging or appertaining. *Provided always*, That in case it should appear to the said judges or justices that the whole of the said dwelling-house, out-houses, offices and appurtenances, cannot be applied to the use of the wife, without manifest injustice to the children or other relations, then and in that case such widow shall be entitled to such part or portions of said dwelling-house, out-houses, offices and improvements

Widow's dower.

a [See 1791, c. 351, s. 1, 2.]

Widow may dissent from her husband's will.

Proviso against fraudulent conveyances.

To be entitled to one third of lands for life.

In which shall be comprehended the husband's usual dwelling house, &c.

Unless it shall appear to the court that this will prejudice the children, &c.

thereunto belonging, as they shall conceive will be sufficient to afford her a decent residence, due regard being had to her rank, condition and past manner of life; which dwelling-house, out-houses, offices and improvements, or such part thereof so allotted the said widow, shall be and enure to her during the term of her natural life; and furthermore, if such husband shall die leaving no child, or not more than two, then and in that case she shall be entitled to one-third part of the personal estate; but if such husband shall die leaving more than two children, then and in that case such widow shall share equally with all the children, she being entitled to a child's part. (a)

If no child, or not more than two, to have one third, otherwise a child's part only of the personal estate.

Method of suing for dower.

a [See 1784, c. 225, s. 4—1787, c. 271.]

And proceedings thereupon.

9. And whereas the present mode of suing for dower is dilatory, expensive and intricate, *Be it enacted*, That after the ratification of this act, it shall and may be lawful for any widow having claim to dower, to file her petition in the superior court of the district, or the court of the county where her husband shall have usually dwelt, setting forth the nature of her claim, and particularly specifying the lands, tenements and hereditaments of which her husband died seized or possessed, and praying that her dower may be allotted to her; whereupon the said court shall issue their writ to the sheriff of the county where the lands, tenements and hereditaments of the deceased husband lie, commanding him to summon twelve freeholders connected with the parties neither by consanguinity or affinity, and entirely disinterested, who upon oath (which oath the sheriff is hereby empowered to administer) shall allot and set off to the said widow, one third part of all the lands, tenements and hereditaments in the said county, of which the said husband was so as aforesaid seized or possessed, and shall put her in possession of the same, which possession shall vest in her an estate for her natural life, in the third part of the lands, tenements and hereditaments of which her husband was so as aforesaid seized or possessed; and the said sheriff and freeholders shall also put her in possession of the house or mansion, or part or portion thereof, in which her said husband most generally dwelt next before his decease, and of all offices, out-houses, buildings and improvements thereunto belonging, or in any wise appertaining; and in case of the lands, tenements and hereditaments that were of the estate of the deceased lying in different counties, the court shall issue their writs to the sheriffs of the several counties respectively, commanding them as a-

foresaid, which writs shall be executed in manner as aforesaid directed, when the lands, tenements and hereditaments lie in the same county; and such sheriff and jury shall also allot and set off to such widow, such part or portion of the personal estate of which her husband died possessed, and to which by this law she shall be entitled, which part or portion shall be and enure to such widow, her executors, administrators and assigns forever.

Jury to allot to the widow her share of the personal property.

10. *And be it further enacted*, That the proceedings upon such petitions for dower shall be in a summary manner, and the judges or justices shall at the first court when such petitions are filed, proceed to hear and determine as to them shall seem just and right: *Provided always*, That the party petitioning for dower, shall give ten days previous notice to the heirs and executors, or executors and administrators of the last will and testament of her deceased husband, and shall serve him, her or them with a copy of the said petition.

Proceedings to be in a summary manner.

Previous notice to the heirs, &c.

11. And whereas wills and testaments which ought to be the most solemn and best considered act of a man's life, are in too many instances the most indiscreet, and from weakness of body and mind, and the undue influence of those about them, and from an omission of due ceremonies, the true intentions of the testator are frustrated, and in justice done to those for whom he meant specially to provide, *Be it enacted by the authority aforesaid*, That no last will or testament shall be good or sufficient either in law or equity to convey or give any estate in lands, tenements or hereditaments, unless such last will shall have been written in the testator's lifetime, and signed by him or some other person in his presence, and by his direction, and subscribed in his presence by two witnesses at least, (a) no one of which shall be interested in the devise of the said lands.

Requisites to make a good will of lands.

a [See 1784, c. 225, s. 5—1811, c. 82], & 1816, c. 915.]

12. And whereas for want of knowledge in the law many real estates are devised in such a manner as to frustrate the intentions of the testators, and it not unfrequently happens from the difficulty of discovering such intentions, that the posterity of such testators are disinherited, and the families of such persons whose fortunes are intended to be promoted are left without support; for remedy whereof, *Be it therefore enacted*, That from and after the ratification of this act, where any lands, tenements, hereditaments, or other real estate shall be devised to any person or persons, the same shall be held, deemed and

A devise of real estate shall pass the fee unless the intention plainly appears to be otherwise.

construed to be a devise in fee-simple, unless such devise shall in plain or express words, or shall be plainly intended by such will or some part thereof, that the testator intended to convey an estate of less dignity, any law, usage or custom to the contrary notwithstanding.

Revocation of a written will.
(See 1819, c. 1004.)

14. *And be it further enacted*, That no written will shall be revoked or altered by a subsequent nuncupative will, except the same be in the lifetime of the testator reduced to writing, and read over to him, and approved, and unless the same be proved to have been so done by the oaths of two witnesses at least, who shall be such as are admissible upon trials at common law.

Nuncupative will.
Requisites for one where the estate exceeds 100l.

15. *And be it further enacted*, That no nuncupative will in any wise shall be good where the estate exceeds one hundred pounds current money of the state, unless proved by two such witnesses as last mentioned, present at the making thereof, and unless they or some of them were specially required to bear witness thereto, by the testator himself, and unless it was made in his last sickness, in his own habitation or dwelling-house, or where he had been previously resident ten days at least, except he be surprised with sickness on a journey or from home, and dies without returning to his dwelling.

How to be proved.

16. *And be it further enacted*, That no nuncupative will shall be proved by the witnesses after six months from the making, unless it were put in writing within ten days, nor shall it be proved till fourteen days after the death of the testator, nor till process has first issued to call in the widow or next of kin, or both if conveniently to be found, to contest it if they think proper. (a)

* [See 1789, c. 308, s. 1.]

Repealing clause.

17. *And be it further enacted*, That every law heretofore in force in this state, and every clause or part thereof, which come within the purview of this act, are hereby repealed and made void.

CHAP. 205.

[See act 1715, c. 10.]

A supplemental act to an act, entitled, An act for proving of wills, and granting administration, and to prevent frauds in the management of intestates' estates.

1. WHEREAS it is enacted in the ninth section of the said act, "That creditors of any person deceased shall "make their claims in seven years after the death of "such debtor, otherwise such creditor shall be forever

“barred ; and if it shall happen that any sum or sum-
 “of money shall hereafter remain in the hands of any
 “administrator after the term of seven years shall be
 “expired, and not recovered by any of kin to the deceas-
 “ed, or by any creditor in that time, the same shall be
 “paid to the churchwardens and vestry, to and for the
 “use of the parish where the said money shall remain.”
 And as there are no churchwardens or vestry to make
 claim in such cases,

2. *Be it therefore enacted, &c.* That as soon as an ad-
 ministrator shall have finished his administration on such
 estates, and no creditor shall make any further demand,
 the residue of such estate shall be deposited in the treas-
 ury, (a) and there to remain without interest, subject to
 the claim of creditors and the lawful representatives of
 such decedent, without being subject to limitation or
 time.

Administrators
 to deposite in
 the treasury the
 residue of the
 estates not
 claimed.
 a [Goes to the
 University, see
 1809, c. 763.]

3. *And be it further enacted,* That the treasurer is here-
 by authorised and empowered in all such cases to demand
 payment of such administrator, and on refusal or delay,
 to give notice of thirty days to appear and shew cause
 why he refuses or delays payment, and on non-appear-
 ance to enter up judgment, and thereon proceed to exe-
 cution for the purposes aforesaid. (b)

Treasurer to de-
 mand payment
 of administra-
 tors.

b [Repealed,
 see 1806, c.
 763.]

CHAP. 206.

An act to prevent the exportation of unmerchantable commodities. (See 1784, c.
 221—1805, c.
 681.)

1. **WHEREAS** the establishment of an inspection of
 certain articles exported from this state would be of great
 utility to the commerce thereof,

2. *Be it therefore enacted, &c.* That the justices of the
 county courts of pleas and quarter sessions in the several
 counties hereafter mentioned, are hereby authorised and
 required at the first or second court to be held in each of
 the said counties after the passing of this act, and on the
 first court in each county respectively, which shall be held
 next after the first day of January in each succeeding
 year, to nominate and appoint in open court one or more
 fit or proper person or persons, residing in the said coun-
 ty, to attend at such times and places as are by this act
 appointed and directed, to inspect all such beef, pork,
 rice, tar, pitch and turpentine, staves and heading, fish,
 flour, butter, flax-seed, sawed lumber and shingles, as

Inspectors to be
 appointed by
 the county
 courts.

Their duty.
 (By Act 1796,
 c. 462, s. 1—in-
 spectors shall
 not inspect by
 deputies ; but
 by 1811, c. 807,
 s. 2, inspectors

- of flour may appoint assistants.) shall be exposed to sale for exportation within the respective counties according to the directions of this act ; and every inspector so appointed shall before he enters upon or executes his office, enter into bond, with two good and sufficient securities, in the penalty of five hundred pounds current money, for the true and faithful discharge of his office according to the directions of this act, (which bond and securities every such court respectively is hereby empowered and required to demand and take, and cause to be acknowledged before them in open court and recorded) and the said bond shall be made payable to the governor or commander in chief for the time being, and his successors in office, and shall be in force for the term of three years after such inspector shall be out of office, and that in the name of the governor or commander in chief for the time being, any person or persons injured may and shall, at his, her, or their costs and charges, commence and prosecute a suit or suits on such bond against the parties therein bound, their executors or administrators, and shall and may recover, all damages which he, she or they may have sustained by reason of the breach of the condition thereof ; and the said bond shall not become void upon the first recovery, or if judgment be given against any plaintiff or plaintiffs who may sue on such bond, but may be put in suit and prosecuted from time to time for the benefit of the party or parties injured until the whole penalty expressed in such bond shall be recovered ; *Provided always*, That if any verdict or judgment shall pass for such inspector or his security, the person or persons at whose instance such suit shall be prosecuted shall pay double costs ; and every such inspector shall take the following oath, *to wit*,
- Plaintiff to pay double costs if verdict for defendant.
- Inspector's oath.
(See act 1810, c. 790, s. 10, for oath of inspector of flour.)
- Court's power over inspectors after appointment.
- I, A. B., do swear, that I will faithfully, impartially, and diligently execute the office of inspector, and that I will not for favor, affection, prejudice or partiality, brand for any person whatsoever, any barrel of beef, pork, rice, tar, pitch or turpentine, fish, flour, butter or flaxseed, or pass any staves or heading, lumber or shingles, other than such as are declared lawful by an act of assembly, entitled, An act to prevent the exportation of unmerchable commodities, according to the best of my skill and judgment.
3. *And be it further enacted*, That the county courts of pleas and quarter sessions of the respective counties,

shall be and are hereby authorised and empowered at any time to discharge any inspector from his said office, who shall misbehave himself, and act contrary to his duty therein, the party complaining giving such inspector ten days previous notice in writing of the complaint against him with the particulars thereof; and at the death or on the disability of any of them, to appoint another to succeed such dead, disabled or misbehaving inspector; and if any such death should happen in the vacation of such courts, it shall then be lawful for any three justices (a) of such court to nominate and appoint some other fit and proper person as inspector until the next succeeding court for such county, or if any inspector shall be rendered incapable of performing his duty, by sickness or other accident, it shall then be lawful for such inspector by and with the consent of three justices to appoint some other person as an assistant during the said inspector's sickness, or other disability, which consent shall be certified under their hands, and lodged with the clerk of the court of the county wherein the inspector resides, and the person so appointed shall take the same oath as inspectors appointed by the courts, and the inspector shall be liable to the same fines and penalties for the said assistant's bad conduct and misbehaviour as he is liable to for his own.

4. *And be it further enacted*, That the places and landings hereafter mentioned shall be and are hereby appointed for the inspection of beef, pork, rice, tar, pitch, turpentine, fish, flour, butter and flax-seed, staves and heading, sawed lumber and shingles, to which places all of the said commodities before sold or exported, shall be brought, examined and inspected, according to the directions herein after mentioned, *that is to say*, In New-Hanover county, at the town of Wilmington, New-Top-sail Inlet, and South-Washington; in Brunswick county, at the town of Brunswick, Walkersburg and Eagles Island, opposite the town of Wilmington, and the Great Island below the Flats, and all other convenient landings: *provided*, the inspector appointed by the court of Brunswick county for the landing on Eagles Island, opposite Wilmington, do reside in that town, any thing in this act to the contrary notwithstanding: in Onslow county, at Swansborough, Bear Inlet, New-river Inlet, and all other convenient landings; in Carteret county, at Beaufort, David Bell's landing on White-Oak, and Abraham Dudley's on Houston's creek; in Craven county, at New-

(By act 1791 c. 345, s. 7, they may hold during good behaviour, but may be removed for misbehaviour, see 1810, c. 790, s. 13.)

Power of justices in the vacation.

a [See 1799, c. 539, s. 2.]

Places appointed for the inspection of commodities in the several counties.

(See act 1793, c. 386, which gives the county courts power to appoint inspections and inspectors, and see 1791, c. 345, s. 7, and 1789, c. 303.)

(Inspectors of flour appointed, 1811, c. 807, s. 6—see 1810 c. 790, & 1814, c. 852.)

bern, Clubfoot's creek, Lower Broad creek and Swift creek bridge; in Beaufort county, at Bath, Washington, Broad creek, South-Dividing creek, Durham's creek, and Blount's creek; in Pitt county, at Martinborough, Lanier's landing, E. Salter's, Dupree's and Ellis's landings, and Spier's landing, the Red Banks and Simpson's landing; in Hyde county, at Woodstock and Log-House landing; in Tyrrel county, at Ballard's wharf, Coniby, and other convenient landings; in Chowan county, at Edenton, Rocky Hock, Black Halls, Red Banks, Wilder's landing; in Bertie county, at the landings heretofore in use for lading of vessels; in Northampton county, at Figure's Point, and Pitch landing, and Jones's warehouse; in Halifax county, at Halifax town and Edwards's ferry; in Edgcomb county, at Tarborough, and all other convenient landings; in Perquimans county, at the landings heretofore used for lading of vessels; in Pasquotank county, at Nixonton, New-Begun creek, Pasquotank-river bridge, Little-river bridge, Simon's creek bridge, Winfield and Parmer's landing, Possum Quarter; in Currituck county, at Tull's creek bridge, Moyack creek, widow Jarvis's, near the Narrows, Indian Town bridge, Checonocomick, near Thomas Paine's landing, at the head of Tull's creek, Currituck court-house, mouth of North river, Cowenjack bridge and Lindsay's; in Cumberland county, at Fayetteville; in Camden county, at the landings where commodities have usually been shipped; Wayne county, Cobb's landing, Spring-Bank, Old-Store, West-Point; Martin county, at the landings heretofore used; Dobbs county, Kingston, Abraham Shepperd's, Bryan Whitfield's, Benjamin Caswell's landing, Peacock's bridge; Davidson county, at Nashville; Montgomery county, at Allen's landing; Jones county, at Trenton, Pollock's ferry, and other convenient places; Johnston county, at Smithfield and Boon's landing; Gates county, at Old-Town, Bennett's creek, and other convenient places. *Provided nevertheless*, That any person or persons having at any landing, which is not by this act appointed a place of public inspection, a quantity of merchandize for exportation, and being desirous to ship the same directly on board a vessel for exportation from such landing, it shall and may be lawful for such person or persons intending to ship and export the said merchandize as aforesaid, to call any inspector, who is hereby required to inspect and brand the same under the rules and directions herein mentioned, any

Proviso for a cargo ready for exportation at any other landing.

thing in this act contained to the contrary notwithstanding.

5. *And be it further enacted*, That where any such inspection shall be appointed by this act to be held in any town that sends a representative to the assembly, the court of the county wherein such town is, shall not nominate or appoint any other inspector or inspectors for any such inspection, but such person or persons who shall during his continuance in office reside in such town.

Inspectors of borough towns to reside in them.

6. *And be it further enacted*, That no master or commander of any ship or vessel shall take on board his ship or vessel any such cask or barrel, or other inspectable commodity, as aforesaid, without being inspected and branded, as by this act is required, under the penalty of one hundred pounds for each offence, one-half to the informer and the other half to the wardens of the county wherein the offence shall be committed, to the use of the poor of such county, to be recovered with costs by action of debt in any court of record having cognizance thereof.

Penalty on masters of vessels for receiving on board uninspected commodities.

7. *And be it further enacted*, That every such inspector shall constantly attend at the places for which he shall or may be appointed, and shall provide an iron to brand any of the commodities (a) bearing the name of the inspector and his place of residence, and shall find laborers equally with the owner to assist in weighing the several commodities he shall inspect and weigh, and also shall find and provide proper steelyards or scales of the lawful standard for that purpose; and if any inspector shall neglect his duty, or brand or stamp any of the commodities contrary to this act, or brand any empty barrel, or lend his brand to any person or persons whatsoever, he shall forfeit and pay for every barrel or cask of beef, pork or rice, fish, flour or flax-seed, ten pounds, and for every barrel of tar, pitch or turpentine, twenty shillings, and for branding any empty barrel, or lending his brand, one hundred pounds, to be recovered with costs, by action of debt, by and for the use of any person who shall sue for the same before any jurisdiction having cognizance thereof, and every other person or persons that shall by any ways or means brand or procure to be branded any cask or barrel as aforesaid, than by the inspector or by his assistant, he or they so offending shall forfeit and pay for every such offence the same fines and penalties as inspectors are by this act liable to pay for breach of duty or misbehaviour.

Inspectors to furnish proper branding irons, &c.

a [Modified as to flour, see 1810, c. 790, s. 5.]

Beef and pork
how packed,
with the dimen-
sions of the
casks.

(See 1784, c.
221, s. 5.)

(This section
repealed in
part by 1791, c.
349.)

Rice inspected.

Fish how to be
saved & salted,
&c.

a [See 1796, c.
462, s. 2.]

Weight of
flour.

Naval stores in
their proper
quantities, &c.

b [See 1784,
221, s. 3—1791,
c. 345, s. 1—
1807, c. 728—
1810, c. 790—
1811, c. 807—
1813, c. 852.]

c [See 1784, c.
221, s. 1.]

8. *And be it further enacted*, That all beef or pork packed within this state for sale or exportation, shall be put in good and sufficient new white oak casks, which shall not contain more than thirty-one gallons and an half, wine measure, each barrel, and fifteen gallons and three quarts each half-barrel; and all barrels and half-barrels shall be made of timber seasoned at least six months after the riving, the staves not less than half an inch thick when wrought, the heading not less than three quarters of an inch thick and well dowedled; twelve good substantial hoops on each cask; and the whole to be tight, fit to hold pickle, and made in a workman-like manner, and shall contain at least two hundred and twenty pounds of good sound and clean merchantable meat, well salted and cured with at least half a bushel of salt to each barrel, and nailed and packed, and no more than two heads in one barrel, and not any boars' flesh in any barrel of pork, or any heads or bulls' flesh, or more than two shanks in any barrel of beef; and every cask of rice shall be filled with sound and well cleaned rice, and after the same has been inspected, found good and merchantable, every such barrel shall be by him branded as aforesaid, and a certificate thereof given to the owner, bearing date in words at length the same day such commodity was inspected and passed.

9. *And be it further enacted*, That each barrel of fish shall be full of well saved fish and packed with half a bushel of allum salt, and the barrel shall not contain less than thirty-two gallons (*a*) wine measure, and each barrel of flour shall contain one hundred and ninety-six pounds weight of net flour well ground, bolted and packed. (*b*)

10. *And be it further enacted*, That every barrel of pitch or turpentine shall contain thirty-two gallons, and be free from any fraudulent mixture, and in good and sufficient casks made of good seasoned staves, at least three quarters of an inch thick and not exceeding four inches in breadth, and each to be at least two thirds covered with good hoops, (*c*) and the joint of the head placed perpendicular to the bung, and before it be branded by the inspector shall be weighed in his presence, and every barrel of pitch or turpentine shall weigh not less than three hundred and twenty pounds weight including the barrel, and if pitch or turpentine shall be found by the inspector to be fraudulently mixed, the same shall be

condemned and forfeited to the use of the poor where the same shall be, and may by the wardens thereof be cleansed and sold for such use; and every barrel of tar shall be the gauge of thirty-two gallons wine-measure, and every barrel of less size or in bad casks not being two thirds bound with hoops, shall be put in merchantable order at the expense of the owner, and every barrel of tar, pitch and turpentine, after the same shall be inspected, gauged, found clean, well filled, and in merchantable order, shall be by him branded. And forasmuch as it is difficult in warm and rainy weather to separate tar from water, *It is hereby declared*, That water shall not be accounted a fraudulent mixture in any tar, but that in such cases the barrel shall not be branded by the inspector until the same is as free from water as it can be made, any thing herein contained to the contrary notwithstanding.

11. *And be it further enacted*, That every maker of tar, pitch or turpentine, shall mark or brand every such barrel with the initial letters of his or her name not less than one inch long, under the penalty of one shilling for every barrel as may not be so branded, and every person so failing or neglecting shall also pay one half penny *per* barrel to the inspector for marking the same with the initial letters of the maker's name, which fee shall be paid by the person paying the fees of inspection, and by him may be charged to the maker; and every inspector shall keep a book in which shall be fairly entered the maker's name and mark of every barrel of beef, pork, rice, tar, pitch and turpentine, flour, fish and butter, the number of barrels landed, the number of barrels inspected of the same mark, the merchant or shipper's name causing the same to be inspected, and the time of inspection, and shall give a certificate of any parcel to any person requiring the same on payment of one shilling.

Marked with the initials of each maker, &c.

Inspector to keep a book in which to enter the marker's name, &c.

12. And whereas the said commodities by being exposed to the sun or kept too long on hand after inspection may become unmerchantable, *Be it further enacted*, That no beef, pork, rice, fish, flour or butter shall be shipped on board any ship or vessel for exportation after the expiration of sixty days from the time the same was inspected, nor any tar, pitch or turpentine after the expiration of twenty days, until the same shall have been again inspected, and certificate or certificates granted in the same manner as if such commodities had never been inspected; any thing herein contained to the contrary notwithstanding.

To be exported within a limited time after inspection, or re-inspected.

ing : and every person offending herein shall forfeit five hundred pounds, and the master or commander of such ship or vessel shall be liable to the same penalty as for taking on board any of the said commodities without being branded.

Dimensions of staves and heading, and quality of timber.

13. *And be it further enacted*, That all staves and heading which shall be sold or shipped for exportation shall be of the following dimensions, otherwise not merchantable. *to wit*, butt staves shall be five feet nine inches long, four inches broad, and an inch thick on the heart or thin edge and clear of sap ; pipe staves four feet eight inches long, four inches broad, and three quarters of an inch thick on the heart or thin edge, and free from sap ; hogshead staves shall be three feet six inches long, four inches broad, and three quarters of an inch thick on the heart or thin edge, and free from sap ; barrel staves shall be two feet nine inches long, four inches broad, and three quarters of an inch thick on the heart or thin edge, and free from sap ; white-oak hogshead heading shall be thirty-two inches long, six inches broad, and one inch thick on the heart or thin edge, and clear of sap ; barrel heading shall be nineteen inches long, six inches broad, and three quarters of an inch thick on the heart or thin edge, and clear of sap ; which said several sorts and kinds shall be of the aforesaid dimensions at least and made of sound timber.

Of boards, scantling and shingles. Not to export these articles without being qualified, as in section 2, supra. See 1799, c. 539, s. 1.

14. *And be it further enacted*, That the dimensions of boards, plank, scantling and shingles shall be as follows, or otherwise not merchantable : all shingles not less than eighteen inches long, four inches broad, and five eighths of an inch thick, well made and of sound timber, and no boards or plank shall be deemed merchantable or passed by any inspector that is not free from any split, not less than twelve inches long, hath no edge less than half an inch thick, and as near as may be of an equal thickness at each end ; and every board, plank, piece of scantling, or other square timber, being marked with the number of more superficial feet than are contained therein, shall be forfeited to the wardens of the county for the use of the poor thereof : *Provided nevertheless*, That no staves or heading, shingles, boards, plank or scantling shall be inspected unless required by the purchaser.

Staves, &c. not inspected unless required by the purchaser.

No cooper to expose any barrels, &c. for sale but such as

15. *And be it further enacted*, That from and after the passing of this act no cooper or other person whatsoever making casks shall expose to sale any barrel or half-bar-

pel for the holding of pork or beef, other than such as are by this act directed to be made for that use, under the penalty of twenty shillings; and every cooper or other person making barrels or half-barrels before they expose the same to sale shall set his or her proper brand upon the same, which brand shall be recorded in the office of the clerk of the county court where he or they shall reside under the penalty of ten pounds for each and every neglect, and every barrel for tar, pitch and turpentine shall be branded in the manner aforesaid by the maker thereof under the penalty of five shillings.

this act directs.
To fix brand upon them, &c.
Sec 1784, c. 221, s. 5.

Brand to be recorded.

Naval stores to be branded.

Certificates of inspection to be produced to the buyer.

And oath, &c. to be made if required, &c.

16. *And be it further enacted*, That every seller or exporter of beef, pork, rice, tar, pitch and turpentine, fish, flour, butter and flax-seed, shall produce the certificate of the inspector who inspected the same and make oath or affirmation if required, before a justice of the peace, on the delivery of the goods sold or exported, that the several commodities by him to be sold or exported are the same that were inspected and passed, and do contain the full quantity mentioned in such certificate without embezzlement to his knowledge, which oath or affirmation the justice shall and is hereby required to certify on the back of the certificate, which certificate the seller shall deliver to the buyer of such commodities sold, and the person exporting such commodities shall deliver such certificate to the master of the ship or vessel on board which the same shall be shipped, and if such seller or exporter shall refuse to make oath or affirmation, he shall for every such offence forfeit and pay the sum of one hundred pounds.

Persons ineligible to the post of an inspector.

He not to be a member of assembly.

Office to be forfeited on having any other place of profit.

17. *And be it further enacted*, That no person holding any post or place of profit by deputation or otherwise shall be appointed to the office of inspector, and no inspector shall be capable of being elected a member of the assembly; and if any person shall be appointed to such office, and shall accept of any post or place of profit after such appointment, he shall be rendered incapable of holding his said office of inspector, and the court shall proceed to appoint another inspector in the room of such person, according to the directions of this act.

Fines and forfeitures how recovered and applied.

18. *And be it further enacted*, That the several fines and forfeitures by this act inflicted, for which no method of recovery or application is herein before directed, shall and may be recovered with costs, before any jurisdiction having cognizance thereof, one-half to the use of the prosecutor, and the other half to the county wherein

such penalty shall be incurred, to be applied by the justices of the inferior court towards lessening the county tax.

Penalty on inspectors for buying unmerchandise or cullings.

19. *And be it further enacted*, That no inspector shall by himself or others purchase any cullings or other articles that do not pass inspection, upon pain of forfeiting fifty pounds, to be recovered and applied in like manner as other fines and forfeitures are directed by this act.

CHAP. 207.

An act for regulating the pilotage and facilitating the navigation of Cape-Fear river.

Preamble.

a [See 1786, c. 262, s. 1, and 1796, c. 470, s. 2.]

1. WHEREAS the sums allowed by law to the pilots of Cape Fear river are inadequate to their services (a) by reason of which they refuse to take out branches to enable them to act, and several of them go to other states where encouragement is greater; and whereas the duty of the pilots and of the commissioners of pilotage is contained in so many different acts, that it is become necessary to reduce the substance of them all into one, with such additions and amendments as may tend to render the law in that respect more complete :

Commissioners of navigation to grant commissions to pilots. (See 1783, c. 194, s. 3—1792, c. 371—1766, c. 470, s. 1—1797, c. 486, s. 1.)

2. *Be it therefore enacted, &c.* That the commissioners of the pilotage for the bars and rivers of Cape Fear, or a majority of them, are hereby authorized and empowered from time to time to examine as many persons as shall offer themselves to be pilots for Cape Fear river aforesaid, not exceeding ten in number, and on approving any such person to be a pilot shall give to such person a commission under their hands and seals to act as a pilot for the bars or river, according as they shall find him qualified.

Who are to give bond.

3. *And be it further enacted*, That every such person shall before he obtains a commission or a branch to be a pilot, give bond with two sufficient securities, to the governor or commander in chief for the time being, and his successors in office, in the sum of two hundred and fifty pounds lawful money of this state, with condition for the due and faithful discharge of his office, which bond shall be lodged in the secretary's office in trust for such person or persons as shall appear to be injured by such pilot, and shall be assigned to any person applying for the same, and a copy thereof with a copy of such assignment there-

How to be proceeded on in case of a breach.

on shall be delivered in order to prosecute such pilot and his sureties, and the person or persons to whom any assignment or assignments shall be made shall and may maintain an action thereon, and the bond shall not be void upon the first recovery or if judgment shall be given for the defendant, but may be put in suit from time to time by any person who shall be injured by a breach of the condition thereof, until the whole penalty shall be recovered.

4. *And be it further enacted*, That upon the misbehaviour of any pilot in his office, the said commissioners, or a majority of them, shall and they are hereby authorized and required to remove such pilot from his office by a note in writing directed to him and subscribed by them, and to appoint another in his stead in manner aforesaid, and the commissioners shall put up notice in writing in all public places within the said port, or publish in some convenient newspaper that such pilot is removed.

Pilots may be removed for misbehaviour, &c.

5. And whereas many of the Cape-Fear pilots have neglected to give due attendance when called upon to pilot vessels up or down the river, *Be it therefore enacted*, That when any pilot shall have notice from the master of any vessel or other person in his behalf to attend in piloting such vessel and shall not go on board for that purpose without delay, the pilot having such notice shall forfeit and pay the sum of five pounds (unless he shall at the time of such notice have the actual and personal charge of some other vessel) for each and every day's delay of the vessel of which he had notice to attend by reason of such pilot's neglect, to be recovered by a warrant under the hand of any one of the commissioners on oath being made of the fact (which oath any of the commissioners is hereby authorised to administer) and shall be paid to the master or owner of the vessel so detained or delayed.

Penalty for non-attendance when called upon.

6. *And be it further enacted*, That if the master of any vessel shall send for or take on board any pilot to conduct such vessel from her station to any other place in the said river, and shall afterwards neglect or delay to remove such vessel (wind and weather permitting) such master shall pay unto the pilot ten shillings for attending each and every day he shall be so detained; and if any vessel which shall be boarded by a pilot without the harbour should happen to be blown off to sea by the violence of the wea-

Pilots fees for detention and extra services in case of being blown off.

ther, the pilot on board such vessel shall also be entitled to receive from the master thereof ten shillings for every day he shall be at sea until the said vessel shall be brought into port, which sum such master is hereby required to pay.

Penalty on persons piloting without a branch.

7. *And be it further enacted*, That if any person not authorised as a pilot for Cape-Fear in manner by this act directed, shall assume and take upon himself the office of pilot, and shall bring or attempt to bring into the said river any vessel whatsoever, such person shall forfeit and pay the sum of twenty pounds to be recovered by action of debt, one half to the person who shall sue for the same, and the other half to the commissioners for improving the navigation of the said river. *Provided always*, That it shall be lawful for any person to conduct into the port of Brunswick any vessel in danger from distress of weather or in a leaky condition, any thing herein to the contrary notwithstanding.

Pilots entitled to their pilotage tho' their services be refused.

8. And whereas it hath been customary for masters of vessels who are acquainted with the bar of Cape-Fear river, the New-Inlet, and the river up to Wilmington, to bring their vessels into the harbour and up to the said town without employing any branch pilots; and it being necessary to give good pilots every possible encouragement, *Be it therefore enacted*, That when any master of a vessel shall refuse a pilot to come into or up the said river, or in any part of the said river to go out of either of the inlets, then such pilots so refused shall be entitled to the full pilotage in the same manner as he would have been had he been actually employed for the purpose of piloting such vessel; any law, custom, or usage to the contrary notwithstanding.

Cape Fear pilots where to reside.

9. And whereas it is necessary that some of the pilots of Cape-Fear should reside as near the mouth of the river as possible, in order to be ready on all occasions when any vessel may appear off the bar, and there being no situation so convenient as the ground which belongs to the public, on part of which fort Johnston stood; *Be it therefore enacted*, That the commissioners of the said pilotage do suffer such number of pilots as they shall deem necessary to build such houses for the convenience of themselves and families respectively on the public ground as they shall think proper, and that every such pilot may enclose for his own use an acre of ground for his buildings, gardens and other conveniences, to hold the same to

Provision for themselves and their families.

such pilot during the time he shall continue in office ; (a) and in case such pilot shall die in office, his family shall and may continue in possession of such acre of ground and premises for and during the term of seven years from and after the death of such pilot : *Provided always*, That none of the pilots shall lay off such acre of ground so near the site of Fort Johnston as to interfere with any fortification hereafter to be erected, of which the commissioners of the pilotage of Cape-Fear river are required to take notice, so as to prevent any inconvenient encroachments : *Provided also*, That the family of any deceased pilot shall not commit any waste on the buildings or improvements made by such pilot ; and if any wilful waste shall in such case be committed, such family may be removed by the commissioners.

10. *And be it further enacted*, That when any branch pilot shall see a vessel on the coast having a signal for a pilot, or shall hear a gun or guns fired off the coast, and shall refuse or neglect to go to the assistance of such vessel, such pilot shall on conviction forfeit and pay the sum of twenty pounds, to be recovered by action of debt in any court of record in this state, the one half to the informer, and the other half to the master of such vessel.

11. *And be it further enacted*, That if any branch pilot of Cape-Fear river shall knowingly suffer any kind of ballast or trash to be thrown out of any vessel into any part of the channel of the said river, (b) and shall not within ten days after the commission of such offence make information thereof to one or more of the commissioners of pilotage, such pilot shall upon conviction be forever rendered incapable of acting as a pilot for the said river or any part thereof.

12. *And be it further enacted*, That when any ship or vessel shall arrive in the port of Brunswick, with any infectious distemper on board, the master and pilot of such vessel shall give immediate information thereof to the commissioners of pilotage, and the said commissioners, or any three of them, are hereby authorised and required to order such master to perform quarantine with his vessel at such place and for as many days as he shall think necessary ; and if such pilot or master shall neglect to give such information, the pilot shall forfeit and pay the sum of fifty pounds, and the master for the like neglect shall forfeit and pay the sum of one hundred pounds ; and in case the master of any ship or vessel

a [But this privilege is restricted by the cession of land to the U. S. see 1794, c. 404.]

Penalty for refusing to board a vessel offering a signal. (See 1783, c. 194, s. 6.)

Penalty for pilot suffering ballast to be thrown overboard, &c. b [See 1783, c. 194, s. 8.]

Directions about performing quarantine, where a vessel brings an infectious distemper into the port of Brunswick. (See 1783, c. 194, s. 12, and 1797, c. 486, s. 2.)

being ordered to perform quarantine shall refuse to comply with such order he shall forfeit and pay the sum of five hundred pounds, the said forfeitures to be recovered by action of debt in the name of the commissioners for the time being, and applied to the improvement of the navigation of the said river: and in case any master of a vessel shall abscond so as to evade the payment of the said forfeitures, or any of them, then and in that case the vessel shall be liable, and such vessel may be attached as the property of such master.

Penalty for ballast being thrown over.

13. And whereas the channel of Cape-Fear river hath been greatly injured by throwing ballast and other trash therein: For remedy whereof, *Be it enacted*, That if any ballast shall be thrown out of any vessel into any part of the channel of the said river, by any sailor, mariner or other person whatsoever, the master of the vessel from whence the same shall be thrown, shall forfeit and pay the sum of fifty pounds, to be recovered by action of debt by the commissioners of the navigation and pilotage, one half to the informer, and the other half to be applied in improving the navigation of the said river: *Provided always*, That no recovery shall be had thereon unless suit shall be brought within twelve months after the time the said offence shall be committed.

Time to sue.

Masters to give bond to pay pilotage, see 1786 c. 262, s. 1. This section is confirmed as it regards pilots, by act of congress, 1789, c. 9, s. 4; but is superseded in its other requisition by the constitution of the U. S.

14. And whereas several of the inhabitants in the neighbourhood of Cape-Fear, and parts adjacent, have been greatly injured by masters of vessels carrying slaves and servants out of the said port, and the pilots have been great sufferers by such masters departing without paying their pilotage, *Be it therefore enacted*, That in all bonds taken from masters of vessels, by virtue of an act, entitled, An act for the entering of vessels, and to prevent the exportation of debtors, there shall be the following further conditions added thereto, *that is to say*, That the master giving such bond shall not transport or carry off any slave or slaves, servant or servants, belonging to any inhabitant of this state, and shall not depart the port without paying pilotage according to law; and in case of a breach of the condition of such bond, or any part thereof, the master and his securities shall be liable in the same manner as they would have been had the additional condition not been added.

Powers of the commissioners of the pilotage and navigation

15. *And be it further enacted*, That the commissioners of the pilotage and navigation of Cape-Fear river, for the time being, shall have authority in all matters that

may concern the navigation of the said river from Negro-Head Point downwards, and out of each of the Inlets; and with respect to throwing trash in the river, at the town of Wilmington and the contraction of wharves, shall have a concurrent jurisdiction with the commissioners of the town of Wilmington, and the commissioners of the pilotage, and the commissioners of the said town, shall consult together upon the best methods of preventing any injury being done to the channel by wharves or otherwise opposite to the said town; and until a fund can be established for the payment of a harbour-master the commissioners of pilotage, or such of them as shall reside in the town of Wilmington, shall decide all disputes about the mooring of vessels, and other matters which properly fall within the department of a harbour-master.

of Cape Fear river, see 1786, c. 262, s. 1.

16. *And be it further enacted*, That all and every act and acts of the general assembly for facilitating the navigation and regulating the pilotage of Cape-Fear, so far as the same concerns the navigation and pilotage of the said river be and the same are hereby repealed and made void.

Repealing clause.

CHAP. 208.

An Act for ascertaining the fees of the Pilots at Ocoack, Beaufort, and Bogue inlets, and for appointing commissioners of Navigation for Bogue inlet.

So much as respects the fees of pilots at Ocoack is repealed.

1. *Be it enacted, &c.* That there shall be allowed and paid to every pilot who shall take charge of any ship or vessel over the bar of Beaufort, the following fees, *that is to say*, For every ship or vessel drawing eight feet water, or less, from the outside of the bar to the anchorage at Shackleford's Banks or Borden's Banks, three shillings per foot, for every vessel that draws more than eight feet water three shillings and six pence per foot.

Fees allowed for pilotage over Beaufort bar.

2. *And be it further enacted*, That Edward Starkey, John Starkey, William Nelms, George Mitchell and Reuben Grant, Esquires, be and they are hereby appointed commissioners for the navigation of Bogue Inlet, and they are hereby declared to have the same powers and authorities with respect to the pilots and pilotage of the said Inlet and its navigation as the commissioners of navigation in the several ports in this state are invested with by law.

Commissioners for Bogue inlet —their power. (See 1792, c. 372, s. 1.)

3. *And be it further enacted*, That the pilot for every

Fees of that inlet.

(Fees increased
ibid, s. 2.)

vessel coming into the said Inlet, drawing less than seven feet from the outside of the bar to the anchorage at or near Bear Banks shall be allowed three shillings per foot, and for every vessel drawing more than seven feet shall be allowed three shillings and six pence, and that the same fees be allowed to pilots for pilotage outwards as inwards, in the several ports and harbours above mentioned ; any law, usage, or custom to the contrary notwithstanding.

How pilots to
be authorised,
&c.

4. *And be it further enacted*, That the commissioners or a majority of them in each respective port, shall have full power and authority to examine pilots touching their qualification, and upon their approbation to grant them certificates to pilot vessels into the aforesaid ports, and shall annex to the branch or certificate of every such pilot a copy of the fees allowed them by this act, and also a copy of this clause ; and in case any person shall attempt to pilot or take charge of any vessel, without having obtained a certificate for so doing, and also given bond in manner as is directed in an act, entitled, An act for facilitating the navigation and regulating the pilotage of the several ports of this state, (a) shall forfeit and pay for each and every offence one hundred pounds current money, to the use and benefit of any person suing for the same.

a[1783, c. 194.]

CHAP. 209.

(See 1777, c.
108, s. 4, & 1791,
c. 342.)

An act to prescribe the affirmation of allegiance and fidelity to this state to be taken by the people called quakers, and for granting them certain indulgences therein mentioned.

Privilege to
Quakers to
wear hats, &c.

1. *Be it enacted, &c.* That from and after the passing of this act, it shall be lawful for the people called quakers to wear their hats as well within the several courts of judicature in this state as elsewhere, unless otherwise ordered by the court.

[*The other parts of this act are repealed.*]

CHAP. 210.

An act for repealing an act of the last general assembly, entitled, An act to empower the justices of the county courts to appoint a county attorney and solicitor to prosecute for the state in the county courts, and for the purpose of appointing a salary and fees for the attorney and solicitor and other purposes; and for allowing fees to attorneys who may hereafter prosecute in the respective counties in this state, and for regulating the proceedings on presentments and indictments.

1. *Be it enacted, &c.* That from and after the passing of this act, the above recited act shall be and it is hereby repealed and made void. Repealing clause.

2. *And be it further enacted,* That in all criminal prosecutions hereafter to be had by indictment or presentment in the county courts, it shall be sufficient to all intents and purposes, that the bill shall contain the charge against the criminal expressed in a plain, simple, intelligible and explicit manner, and that no bill of indictment or presentment shall be quashed, or judgment arrested, for or by reason of any informalities or refinements, when there appears to the county court sufficient in the face of the indictment to induce them to proceed to judgment. Forms in criminal prosecutions in the county courts dispensed with

CHAP. 211.

An act to ascertain the measurement of fire-wood sold in the several towns established within this state by the legislature.

1. *Be it enacted, &c.* That all fire-wood sold in the towns established within this state by the legislative authority, shall be sold by the cord and no otherwise; and that each cord shall contain eight feet in length, four feet in height, and four feet in breadth, and shall be corded by the carter or seller, under the penalty of twenty shillings for each offence, to be recovered against the owner or seller, before a single magistrate by a warrant, which penalty shall be to the use of the informer. Wood to be sold by the cord.
How much to measure;

CHAP. 212.

An act to prevent the several species of hunting therein mentioned. (See 1745, c. 58

1. *Be it enacted, &c.* That if any person or persons shall be discovered hunting in the woods with a gun at the night-time by fire-light, such person or persons so offending shall upon conviction by indictment or presentment. —1774, c. 103,
§ 1779, c. 154.)
Penalty for fire-hunting.
How to be recovered.

Punishment if
money not paid.

a [Punished
now by impris-
onment, see
1801, c. 595.]

Penalty for
leaving carcasses
in the woods.

Penalty on mas-
ters, &c. of
slaves hunting-
ing as above.

Penalty on mas-
ter sending a
slave to hunt by
fire-light.

Time limited
for killing deer
in woods or un-
fenced grounds.

Penalty.

ment in any court of record in the state, be fined by such court twenty pounds current money, to be applied to the use of the county wherein the offence was committed; and if any person so fined shall fail or refuse to pay such fine, the person so failing or refusing shall receive thirty-nine lashes (*a*) on his bare back by order of such court, to be well laid on in open view by the sheriff of the county, and shall stand committed until all costs accruing upon the presentment be paid.

2. And whereas many persons make a practice of hunting and killing deer and leaving the carcasses in the woods, *Be it enacted*, That if any person shall be convicted as aforesaid of killing any deer and leaving the carcasses thereof in the woods, he shall for every offence forfeit and pay the sum of twenty shillings.

3. *And be it further enacted*, That if any slave or slaves shall be discovered hunting in manner herein before mentioned, the master of such slave or slaves, or the person in whose service he or they may be, shall upon due conviction of such slave or slaves before any justice of the peace of the county wherein such offence may be committed, forfeit the sum of five pounds, to be levied by a warrant immediately to be issued by such justice for that purpose; and if any person shall be duly convicted as aforesaid of sending his slave to hunt with a gun in the night by fire-light, he shall be subject to the same pains as are provided by this act to be inflicted on fire-hunters.

4. *And be it further enacted*, That it shall not be lawful for any person on the east side of the Apalachian mountains, to kill or destroy any deer running wild in the woods or unfenced grounds in this state by gun or otherwise, between the twentieth day of February and the fifteenth day of August then next succeeding in each year, unless on his own lands; and if any person on the east side of the said mountains shall kill or otherwise destroy any deer within the time before described and contrary to the meaning and intent of this act, every such person shall forfeit and pay for each and every deer so unlawfully killed or destroyed, the sum of forty shillings, to be recovered before any justice of the peace, and applied as is by this act directed: and in case any servant or slave shall on the east side of the said mountains kill or destroy any deer between the twentieth day of February and the fifteenth day of August in any year, the owner of such slave shall be liable to pay the sum of forty shillings for

each deer so unlawfully killed or destroyed, to be recovered and applied as before directed.

5. *And be it further enacted*, That it shall not be lawful for any person or persons on the east side of the Apalachian mountains, to hunt with a gun or with dogs on the lands of any other person without leave obtained from the owner of the said land, under the penalty of forfeiting five pounds for every offence, to be recovered by the owner before any justice of the peace of the county where such offence is committed or the offender resides, and applied one half to his own use, the other half to the use of the county: *Provided*, That no such recovery shall be had for the offence afore mentioned unless the owner of the land shall, by advertisement posted up in two or more public places, have forbid the persons so hunting by name, or all persons generally to hunt on his land previous to the offence. *Provided also*, That recovery shall not be had in any case whatever unless the prosecution is commenced within one month after the offence is committed.

Penalty for hunting on another person's land without leave.

Exception.

Time to sue.

6. *And be it further enacted*, That so much of the laws heretofore made, which relates to fire-hunting and destroying deer at unseasonable times of the year, as comes within the purview of this act, be and is hereby repealed and made void to all intents and purposes, and construed as if the same had never been made.

Repealing clause.

7. *And be it further enacted*, That all fines imposed and recovered by virtue of this act, shall be one half to the use of the informer, the other half to the use of the poor of the county wherein the offence shall be committed, except such as are otherwise directed.

Fines how applied.

CHAP. 213.

An act for the restraint of idle and disorderly persons.

1. WHEREAS it becomes necessary for the welfare of community to suppress wandering, disorderly and idle persons:

2. *Be it therefore enacted, &c.* That it shall not be lawful for any person or persons who have no apparent means of subsistence, or neglect applying themselves to some honest calling for the support of themselves and families, and every person so offending, who shall be found sauntering about neglecting their business, and endeavouring to maintain themselves by gaming or other

Vagrants and disorderly persons to be apprehended, and a case of conviction to require security for good behaviour.

In case of refusal, &c. to be committed for any time not exceeding ten days.

How to be proceeded against for a repetition of the offence after a limited time.

Persons of ill-fame, &c. not to remove without a certificate, &c.

How to proceed with it.

undue means, it shall and may be lawful for any justice of the peace of the county wherein such person may be found, on due proof made, to issue his warrant for such offending person, and cause him to be brought before said justice, who is hereby empowered, on conviction, to demand security for his or their good behaviour, and in case of refusal or neglect to commit him or them to the gaol of the county for any term not exceeding ten days, at the expiration of which time he shall be set at liberty if nothing criminal appears against him, the said offender paying all charges arising from such imprisonment; and if such person shall be guilty of the like offence from and after the space of twenty days, he or they so offending shall be deemed a vagrant, and be subject to one month's imprisonment with all costs accruing thereon, which if he neglects or refuses to pay, he may be continued in prison until the next court of the county, who may proceed to try the said offender, and if found guilty by a verdict of a jury of good and lawful men, said court may proceed to hire the offender for any time not exceeding the space of six months to make satisfaction for all costs; but if such person or persons so offending be of ill fame, so that he or they cannot be hired for the cost, nor give sufficient security for the same, and his or their future good behaviour, in that case it shall and may be lawful for said court to cause the offender or offenders to receive thirty-nine lashes on his or their back, after which he or they shall be set at liberty, and the cost arising thereon shall become a county charge, which punishment may be inflicted as often as the person may be guilty, allowing twenty days between the punishment and the offence.

3. *And be it further enacted,* That it shall not be lawful for any person or persons of ill fame or suspicious characters to remove him or themselves from one county to another in this state without first obtaining a certificate from the sheriff of said county, or some justice of the peace or captain of his company, setting forth his former good behaviour and his intention in removing, whether to settle in said county, or if travelling to set forth his business and destination; and if such traveller should be desirous to make any stay in any county longer than forty-eight hours, he shall first apply to some justice of said county for leave and obtain a certificate for that purpose setting forth the time of his permission; and if such person shall be found loitering in said county after

the expiration of his permit, or fail to obtain the same agreeable to the true intent and meaning of this act, such person so offending may be apprehended by any person or persons and carried before some justice of the peace, who may enquire into his character and business, and fine him at his discretion, not exceeding forty shillings; but if the said traveller shall be found on examination to be a person of ill fame, and there be reason to suspect that he is loitering in said county for some evil purpose, attempting to acquire a living by gaming, or other bad practices, such justice shall have power to commit any person of like character, until he shall find good and sufficient security for his good behaviour, for any time not exceeding ten days; and such justice of the peace or court of the county shall proceed against such offender in the same manner as is heretofore prescribed for vagrants.

Penalty for neglect.

4. *And be it further enacted*, That it shall not be lawful for any house-keeper in this state to harbor any traveller or idle person of the character aforesaid for any longer time than is heretofore specified, under the penalty of five pounds for every such offence, to be recovered by warrant before any justice of the peace of the county where the offence is committed.

Penalty for harbouring persons of the above description.

5. *And be it further enacted*, That it shall not be lawful for any house-keeper to harbour and conceal or hire any orphan child or children without first obtaining leave of some justice of the peace, under the penalty of five pounds; and such justice on granting permission, shall compel the person requiring the same to bring the said orphan child to the next county court, which is hereby required to bind such orphan children, agreeable to law.

Or orphan children, &c.

6. *And be it further enacted*, That all fines inflicted by this act shall be one half to the informer, and the other half to the poor of the county.

Fines how applied.

CHAP. 214.

An act for dividing Duplin county.

1. *Be it enacted, &c.* That from and after the passing of this act the said county of Duplin shall be divided into two distinct counties, by a line beginning on the line that divides Duplin from New-Hanover county where the main road crosses Bultail, a branch of Rockfish creek; and running thence a strait line to the lower bridge on

County erected by the name of Sampson.

Boundary.

Stewart's creek, from thence a direct line to Goshen swamp at the mouth of Young's swamp, thence due north to the Wayne line; and all that part of the said county of Duplin which lies west of the above line, shall be established into a separate and distinct county by the name of Sampson.

CHAP. 215.

An act for dividing Cumberland county into two distinct counties.

(See 1784, c. 231.)

County erected by the name of Moore.

Boundary.

1. *Be it enacted, &c.* That from and after the fourth day of July next, the county of Cumberland shall be divided into two distinct counties, by a line beginning at Cole's bridge, on Drowning creek, thence a direct line to the corner of Wake and Johnston counties, in Cumberland line, and all that part of Cumberland lying to the northwest of the new line, shall be a separate and distinct county by the name of Moore county.

CHAP. 216.

An act for altering the line between the counties of Lincoln and Burke, and appointing commissioners to fix on a convenient place in the said county of Lincoln, to erect the public buildings of the said county.

Dividing line between Burke and Lincoln.

1. *Be it enacted, &c.* That the boundary line, between the counties of Burke and Lincoln shall hereafter be as follows, *to wit*, Beginning at the Horse-Ford on Catawba river, running thence to John Hawnsen, Hendry river, thence to William Orrson, Jacob's river, and thence to the intersection of the counties of Burke, Lincoln and Rutherford, as they now stand.

CHAP. 217.

An act for extending the dividing line between the counties of Edgecomb and Martin, and between the counties of Martin and Pitt.

Dividing line between Edgecomb and Martin, and between Martin and Pitt.

1. *Be it enacted, &c.* That Isaac Sessums, Joseph Hart, Nathan Mayo, Joseph Cooper, and Solomon Cherry, commissioners, or a majority of them, be and they are hereby authorised and empowered, as soon as may be after the passing of this act, to extend the dividing line between the counties aforesaid, beginning in the old line

that formerly divided Edgcomb and Halifax, at or near Benjamin Cotton's, running thence a direct course to the line that divides Martin and Pitt counties at or near Charles Council's.

2. *And be it further enacted*, That where any vacant lands may have been entered in either of the said counties (and not surveyed) over the said line, the same shall have preference according to the date of such entry, as fully as if it had been made in the county where the land shall appear to be. Entries of land to be valid.

CHAP. 218.

An act for extending the boundary line between the counties of Currituck and Camden, and, for allowing surveyors further time to make their returns.

1. *Be it enacted, &c.* That the following shall hereafter be held and deemed the boundary line between the said counties, *that is to say*, Beginning at the head of North river where the same forks into two runs, thence a direct course to the middle of Lamb's toll road or bridge, thence a direct course to the Virginia line, so as to divide that part of the Great Dismal Swamp, as nearly as may be between the said counties. Boundary established between Currituck and Camden.

2. *And be it further enacted*, That where any vacant lands may have been entered in either of the said counties over the said line, the same shall have preference according to the date of such entry, as fully as though it had been made in the county where the land shall appear to be. Entries of land to be valid.

3. And whereas by reason of the great difficulty of making surveys in the swamps and low lands in this state, the surveyors in many counties have not made their returns agreeable to law; *Be it further enacted*, That the county surveyors shall be allowed a further time of twelve months, from and after the passing this act, for making their returns; any law, usage or custom to the contrary notwithstanding. Further time allowed surveyors.

Read three times, and ratified in General Assembly, }
the 2d day of June, A. D. 1784. }

SIGNED BY

RICHARD CASWELL, S. S.
THOMAS BENBURY, S. C.

Alexander Martin esq. governor.

At a General Assembly, begun and held at Newbern, on the twenty-second of October, in the year of our Lord one thousand seven hundred and eighty-four, and in the ninth year of the independence of the said state : Being the first session of this Assembly.

CHAP. 219.

An act for the more regular collecting payment of, and accounting for the public taxes.

1. WHEREAS the mode heretofore directed by law for the collecting payment, and accounting for the public taxes, hath been found to be extremely irregular, inconvenient and expensive, and large sums remain unaccounted for : For remedy whereof,

Taxes to be collected in the following manner.

2. *Be it enacted*, That all taxes by this assembly imposed, or hereafter to be imposed on the citizens of this state, shall be collected, paid and accounted for, in the manner and form following :

Collectors to be furnished with lists of taxable property.
a [Sheriffs, see 1791, c. 334, s. 1.]

3. On or before the first day of November, in every year, the clerks of the respective counties within this state, shall furnish the collectors (a) of their counties with a list of the taxable property in their respective districts, as the same lists are directed to be made out by an act passed at Hillsborough, on the ninth day of April, in the eighth year of the independence of this state, entitled, an act to amend an act, entitled, an act for ascertaining what property in this state shall be deemed taxable property, the method of assessing the same, and collecting public taxes : (b) and the collectors shall appoint the day and place in each district of said county, in the month of April, when and where he will attend for the purpose of receiving from the inhabitants of such district, the public tax required by law from each inhabitant thereof, agreeable to the list of taxable property furnished him as aforesaid ; the said collector having caused eight days previous notice of the time, place, and cause of his attendance, to be given to the inhabitants of the said district, by advertising the same ; and if any person or persons so notified, shall neglect, or refuse to pay, or cause to be paid, on the day appointed, his part of the public taxes as assessed, it shall and may be lawful for the said collector to levy the same, by distress and sale of the goods and chattels of

δ [1784, c. 195.]

And to give notice of the time and place of his attendance.

Proceedings where persons do not pay.
(See 1792, c. 360, s. 5, and c. 376—1796, c. 449.)

the persons so neglecting or refusing, and for every distress and sale so made, it shall and may be lawful for such collector, as fees of office, to levy therewith the sum of two shillings and eight pence. *Provided always*, That the said collector shall give ten days previous notice of the public sale of the distress taken, and the amount of the tax thereon due, by advertisement at three of the most public places in and near the said district.

Proviso to advertise.

4. *And be it further enacted*, That if any collector, sheriff, or other person holding public monies, shall presume to demand or accept any fee, gift, gratuity or discount, for paying or taking up any warrant or draught, chargeable upon the taxes, every such offender, upon due conviction in any court of record, shall forfeit and pay to the state a sum equal to the amount of the draught so taken up, and shall moreover forfeit his whole commissions upon his collection, and be rendered thereafter incapable of holding, or exercising any office of trust, honour or profit, in this state.

Penalty for taking any fee in paying warrants, &c.

5. *And be it further enacted*, That from and after the passing of this act, the business heretofore conducted by treasurers for the several districts of this state, shall be conducted by one treasurer, to be appointed by the general assembly, who shall keep his office at Hillsborough, (a) whose business and duty it shall be to keep distinct accounts with the several county sheriffs within this state for the taxes by them hereby directed to be collected, and the return thereof directed to be made into the said office, and with the clerks of superior and county courts, for all sums of money paid on account of any taxes by them by law directed to be collected, and of recognizances forfeited, fines decreed, forfeitures and amercements made by judgments of the said courts, as far as the said recognizances, fines, forfeitures, and amercements, are by law directed for the use and benefit of the state, and of all monies by him received on any account whatsoever; distinguishing particularly the accounts of the separate taxes and impositions laid by law, and their produce, with the payments made by the treasury on the grants of the general assembly, or the warrants of the governor, for the time being, or where taxes are or may be laid, for special purposes, to those by law authorised to receive the same.

Treasury-office where to be held, and the duties incident thereto.

a [At Raleigh, see ordinance of 10th Aug, 1788, c. 297; and acts of 1791, c. 337, & 1792, c. 367, s. 4.]

6. *And be it further enacted*, That over and above the usual bonds directed by law to be given by the sheriff of Sheriffs to give bond in the sum

of 2000*l.* for collection and payment of the public taxes.

a [1st Oct. see 1787, c. 269.]

Which is to be forwarded to the treasurer, &c.

b [Altered by 1787, c. 269, s. 2 & 3.]

Treasurer to enter up judgment against delinquent sheriffs.

How execution to issue.

c [See 1787, c. 269.]

Commissions of delinquent sheriffs forfeited.

Power of securities, in case of a sheriff's death before the time limited for collecting, to collect the taxes.

Treasurer to

each county before his entering into office, he shall enter into a distinct bond, with two sufficient securities, to be approved of by the county court, in the sum of two thousand pounds of the current money of the state, to the governor, conditioned for the due collection from the collectors, payment and settlement of the public taxes, which to him are hereby directed to be by the county collectors paid, on or within the time by this act directed, (*a*) which bond, after having duly recorded the same, the clerk of each county court is hereby directed to forward to the treasurer of the state, together with a list of the taxable property of the county, made conformable to the act of assembly aforesaid. (*b*)

7. *And be it further enacted*, That if the sheriff or sheriffs of any county within the state shall neglect or refuse to settle his or their accounts on or within the time limited by this act, and in manner hereby directed, then it shall and may be lawful for the treasurer of the state to enter up judgment in the name of the governor on the same, for the amount of the tax due from such sheriff or sheriffs and their securities, in any court of record within this state, which is hereby declared to be good and valid in law, and execution may issue thereon, directed to the succeeding sheriff, or the coroner of the county wherein the delinquent sheriff resides, as if the sheriff and securities had been prosecuted to judgment by the usual processes of the said court; any law, custom or usage to the contrary notwithstanding; (*c*) and the sheriff so delinquent is hereby declared to have forfeited all commission by this act allowed on his collection of public taxes; and the like remedy is hereby given and declared to each and every sheriff against all delinquent collectors within their respective counties.

8. *And be it further enacted*, That if the sheriff of any county within this state shall die shortly before, or during the time appointed for the collection of public taxes, so that the county court could not have appointed a successor in office before the time for collecting the taxes, in such cases it may and shall be lawful for their securities to receive the same from the collectors; in which business they are hereby declared to have all the powers, authorities, privileges and emoluments, in and for the receipt and collection of public taxes, which the sheriff deceased possessed and enjoyed.

9. *And be it further enacted*, That the public treasu-

ger shall on his appointment call for and demand from the comptroller of this state, a list of all persons within this state described in an act of assembly passed at Hillsborough, in the sixth year of the independence of this state, entitled, An act to establish a department for adjusting and liquidating the public accounts of this state, and for appointing a comptroller, and other purposes, who have not agreeably thereto settled their public accounts; against all and every of said persons the said treasurer is hereby required to commence an action of debt, as the said comptroller is directed, under the eighth section of the said last mentioned act; and the said treasurer is further hereby required to call for and demand from the said comptroller the accounts of all persons indebted to the public, either before or since the revolution for quit-rents received, public monies, or public property of any denomination whatsoever, for which the said treasurer is hereby directed and authorised to commence action of debt, or otherwise, in the name of the governor, for the balances remaining due to the former province or present state of North-Carolina; to which action or actions so brought, no plea of limitation shall be admitted, any law to the contrary notwithstanding.

10. *And be it further enacted*, That in case of the death or disability of the treasurer, during the recess of the general assembly, then it shall and may be lawful for the governor, and he is hereby empowered and required, with advice of his council, to appoint some other fitting person to the office of public treasurer, which person so appointed shall have all the powers, authorities and emoluments hereby granted, subject to the same rules, regulations and penalties herein directed, which office he shall hold until the end of the succeeding session of the general assembly, and no longer.

11. *And be it further enacted*, That the said treasurer before he enters into office, shall give bond with sufficient securities, whose property shall be valued at least to the amount of the bond required, the treasurer's property included, in the sum of one hundred thousand pounds, to be approved of by the governor and council, to the governor, for the use of the state; which bond shall be conditioned for the faithful and diligent discharge of his trust, and accounting for the public monies of this state, and calling to account by law, persons charged with public monies who shall prove delinquents, and making regular

demand a list of the comptroller of those who have not settled their accounts, or are indebted to the public, &c to commence suits.

[Obsolete.]
(See 1809, c. 763.)

In case of death or disability of the treasurer in the recess of the assembly, the governor and council to appoint.

Bond to be given by the treasurer.

This section is superseded by 1801, c. 582, & 1819, c. 101Q.

returns from his office of the proceedings therein, and of the cash on hand, and the sums remaining due, to every session of the general assembly of this state, in person, and as often as thereunto required to the governor for the time being; on which bond judgment may be entered up by his successor in office, in the same manner as by this act is directed on the bonds of delinquent sheriffs against him the said treasurer and his securities, where the said treasurer hath not fully complied with the duties of his office, as by this act is directed.

Remedy for a breach.

Penalty on the treasurer for neglect of duty.

12. *And be it further enacted*, That if it shall appear that the public treasurer hath failed at any time to pay the public monies in his hands on grants of the general assembly, on the governor's warrants, or monies brought into the treasury on special taxes, to those authorised by law to apply for and receive the same, or hath neglected in any instance to call to account as by this act is directed, any delinquents therein described, by which the public revenue of the state may suffer loss, then and in such case the said treasurer shall be held and deemed accountable for sums due by such delinquents, to all intents and purposes as if the same had actually been paid into his office.

What grant or warrant may be taken up.

13. *And be it further enacted*, That the county sheriffs, or the public treasurer, shall not discharge any grant of assembly, or warrant of the governor, hereafter to be issued, unless in the said grant and warrant it shall particularly express the cause and service for which the same issued.

Treasurer to be elected annually.

14. *And be it further enacted*, That the election of the said public treasurer shall be annual, and that in consideration of his office, he shall be entitled to and receive the salary of five hundred pounds (*a*) per annum, in full consideration of all services incident to his office; and the said treasurer is hereby required to take the following oath, viz :

His salary.
a [750*l.* see the journals of 1790, act of 1793, c. 388, s. 2, and the list of fees, c. 40 .]
His oath.

I swear that according to the best of my abilities and judgment, I will execute impartially the office of public treasurer in all things, according to the true intent and meaning of the act for the more regular collecting payment of, and accounting for the public taxes; and that I will not directly or indirectly be concerned in carrying on trade or merchandize of any kind whatsoever, or apply the public money to any other use than by law directed. So help me God.

15. *And be it enacted*, That all acts and clauses of acts heretofore made, which come within purview of this act, be repealed and made void. Repealing clause.

CHAP. 220.

An act for raising a public revenue for the support of government, and to repeal an act, entitled, an act to suppress excessive gaming.

1. WHEREAS a settled revenue is necessary for the maintenance of the governor, judges of the superior courts, and other officers and persons:

2. *Be it therefore enacted, &c.* That from and after the first day of January next, the following duties, impositions and taxes, be collected and accounted for in manner hereafter pointed out and directed, *viz.* for a general license to an attorney, ten pounds; for a licence to practice in the county courts, five pounds. (a)

Taxes on attornies. (The duties laid by this act are superseded by the adoption of the federal constitution, &c.)
a [See 1806, c. 638, s. 1, and 1809, c. 769, s. 1.]

CHAP. 221.

An act to amend an act of Assembly, passed at Hillsborough in June, one thousand seven hundred and eighty-four, entitled, an act for levying certain duties on all foreign merchandize imported into this state in aid of the public finances, and directing the mode of collecting the same; and also to amend one other act passed in the same year, entitled, an act to prevent the exportation of unmerchable commodities; (b) and also to amend one other act of assembly passed in May, one thousand seven hundred and eighty-three, entitled, an act for facilitating the navigation, and regulating the pilotage of the several ports of this state. (c)

That part of the act concerning duties, superseded by the adoption of the constitution of the U. States.
b [1784, c. 206.]
c [1783, c. 194.]

1. And whereas in the act to prevent the exportation of unmerchable commodities, it is directed that all barrels of pitch and turpentine shall be covered two thirds with hoops (d) is found unnecessary: *Be it therefore enacted*, That from and after the passing this act, it shall be lawful for the inspectors to inspect and brand all barrels of pitch and turpentine which shall be well secured with twelve good hoops on each barrel, in case the same shall in other respects be agreeable to law; nor shall any barrel of pitch or turpentine be refused or condemned for want of weight, if the barrel shall be good, of full size, and well filled with good pitch or turpentine, any law to the contrary notwithstanding.

What barrels of pitch and turpentine may be inspected and branded.
d [1784, c. 206, s. 12.]

2. *And be it further enacted*, That no inspector shall hereafter refuse to pass and brand any barrel containing any inspectable commodity on account of width or thick-

What barrels are sufficient. (See 1784, c. 206, s. 10.)

ness of the staves ; provided no stave exceed five inches in width and is at least three quarters of an inch thick at the chime or crose, and of proportionable thickness in the bilge.

What fish shall be merchantable.

(See 1784, c. 206, s. 9.)

Fees allowed for inspection.

(For further fees see 1781, c. 45, s. 3 & 6.)

What barrels may be passable for beef or pork.

What for hog's lard.

3. *And be it further enacted*, That all fish hereafter to be exported from this state shall be packed in good and sufficient barrels, and shall be inspected by the inspector of the county where the same may be saved at the time of shipping the same ; and where the barrels shall appear to be good and full of good sound fish, by the best information the inspector can make by examining or broaching or otherwise, the same shall be deemed merchantable, on the inspector's marking, branding, &c. otherwise it shall not be lawful to export any fish from this state ; any law, usage or custom to the contrary notwithstanding.

4. And whereas the fees allowed in the said act to inspectors, are in some instances inadequate to their services ; *It is hereby enacted*, That from and after passing this act, the respective inspectors shall and may lawfully take and receive the following fees and no more : for inspecting each barrel of flax-seed, containing seven and a half bushels, one shilling ; for cleaning the same if required, three shillings.

5. *And be it further enacted*, That all barrels in which pork or beef shall be packed for exportation, shall be deemed merchantable, and may be passed and branded by any inspector ; provided they be made of turkey, water or white-oak, and are in all other respects agreeable to law ; and that it shall be lawful for the inspectors to inspect all hog's lard which shall be exported in casks, respecting the quality thereof ; for which the inspector shall be entitled to fees similar to those allowed in pork, respect being had to the size of the cask ; and the article of hog's fat or lard shall not hereafter be exported unless in cy-press or juniper casks, and inspected ; under the pains and penalties inflicted by law for exporting uninspected pork, beef or any other commodities liable by law to be inspected.

CHAP. 222.

An act directing the sale of confiscated property.

(See 1779, c. 139 & 153—
1782, c. 175—
1801, c. 571—

1. WHEREAS it appears to this general assembly that considerable quantities of lands, tenements, here-

ditaments and moveable property, which have been confiscated under some one or other of the laws of this state commonly called confiscation laws, yet remain unsold; and it being just and necessary that the same should be sold for the use and benefit of the state:

2. *Be it therefore enacted, &c.* That all the lands, tenements, hereditaments and moveable property within this state, heretofore confiscated and not yet sold, (except such lands which have not been granted by the crown of Great-Britain, or the lords proprietors of Carolina, or any of them, in fee, before the fourth day of July, one thousand seven hundred and seventy-six, and such other lands, tenements, hereditaments and moveable property, which hath or have heretofore been restored to the former owners by the general assembly, or otherwise disposed of by lawful authority) shall be sold by commissioners in manner herein after directed.

3. *And be it further enacted,* That the commissioners for the several districts shall be as follows, *to wit,* for the district of Morgan, John Walker; for the district of Salisbury, Charles Bruce; for the district of Hillsborough, Archibald Lytle; for the district of Halifax, Nicholas Long; for the district of Edenton, Hardy Murfree; for the district of Newbern, James Armstrong; and for the district of Wilmington, Griffith John M'Ree.

4. *And be it further enacted,* That the several commissioners by this act appointed, shall have power within their respective districts, and they are hereby required to call on the surveyor of each and every county respectively, to make actual surveys of all the confiscated lands by this act directed to be sold, lying within the county whereof he is surveyor. *Provided,* That no survey shall contain a greater quantity of land than six hundred and forty acres. And the surveyors respectively shall return two fair plats of each and every survey to the commissioners within three months after receiving the commissioners' orders for that purpose, in which return shall be expressed the quantity and situation of the land, together with the name of the late owner or owners, and in case of town-lots, the number of the lot and how improved, shall also be expressed.

5. *And be it further enacted,* That the lands, tenements, hereditaments and moveable property, by this act intended to be sold for the use and benefit of the state, shall be sold by the commissioners at public vendue to the highest

1802, c. 613—
1794, c. 405.)

What confiscated property not yet sold, shall be sold by commissioners as directed by this act.
[Obsolete.]

Exception.

Commissioners appointed.

[Obsolete.]

Who are to call on the surveyor to survey confiscated lands.

(Obsolete.)

No survey to contain more than 640 acres.
Surveyor's duty in returning plats.

Property how & where to be sold.

(Obsolete.)

bidder, at the court-house of the county wherein such lands, tenements, hereditaments and moveable property shall be, for the current money of this state, or the certificates granted to the officers and soldiers of the continental line of this state, first giving public notice of the time of sale, as soon as may be after receiving the returns herein before directed to be made by the sheriffs and surveyors, by advertising the same at the court-houses of the districts wherein such property shall be, and by publication thereof in the North-Carolina (if there should be a paper published in the state) Virginia and South-Carolina Gazettes, at least three months before the day of sale; which advertisement shall clearly express the conditions of sale, the particular tracts of land with their situations, town-lots with the quantity of ground each lot contains, the number of the lot and how improved, and also each article of moveable property to be sold in each county respectively, together with the name of the person or persons to whom each tract of land, town lot, or article of moveable property did lately belong; (a) which sales shall be made on credit for twelve months, the purchasers giving bond with sufficient security, payable to the governor for the time being, or his successor, for the use of the state, in double the amount of the purchase money, conditioned for the payment of the principal in current money or certificates as aforesaid, with lawful interest at the end of the term aforesaid.

a [Titles of purchasers confirmed by act 1785, c. 235.]

Commissioners to return plats, &c. to the Secretary's office.

(Obsolete.)

6. *And be it further enacted*, That the commissioners respectively shall transmit to the Secretary's office two fair plats of each and every survey of land and town lot which shall be sold by virtue of this act, within six months after such sales are made; wherein shall be expressed the quantity and description of the land, county where situated, to whom sold, and the price; together with the name of the late owner; and in case of town-lots the number of the lot as by the plan of the town where such lots may lie, shall also be expressed; and thereupon the governor and commander in chief shall cause grants under the great seal of the state to be made out to the respective purchasers; one of the aforesaid plats shall be annexed to the grant, and the other filed by the secretary; which grants shall be enrolled in the secretary's office in the same manner as other grants; but no grant shall issue from the secretary's office until the purchaser shall have paid the principal and interest of

Grants to issue in consequence.

But not till the purchase mo-

the purchase money ; and where it shall so happen that a suit or suits shall be prosecuted against any of the purchasers agreeable to the directions of this act, the lands, tenements, hereditaments and other property purchased as aforesaid, shall be liable to execution on the judgment of the plaintiff ; any thing in this act to the contrary notwithstanding.

ney and interest is paid.

The purchased property liable to execution for the debt.

7. *And be it further enacted*, That the commissioners respectively shall give bills of sale for all negroes and other moveable property, subject nevertheless to the payment of the purchase money, in the same manner as lands are by this act made liable.

To give bills of sale, but subject to the payment of purchase money. (Obsolete.)

8. *And be it further enacted*, That in case of the death, removal out of the state, or resignation of all or any of the commissioners named in this act, his excellency the governor, with the advice of the council of state, be and he is hereby authorised and empowered to appoint other commissioners to fill such vacancy or vacancies.

Vacancies of commissioners how to be supplied. (Obsolete.)

CHAP. 223.

An act to regulate and ascertain the several officers' fees therein mentioned, and for altering the times of holding the superior courts of law and equity for the districts of Halifax, Edenton, Newbern and Wilmington.

[See 1786, c. 253.]

1. *Be it enacted, &c.* That for the future, the several officers herein mentioned, shall take and receive the following and no other or greater fees whatsoever, viz : The clerks of the superior courts of law and equity for every leading process returned to the first court, and all subsequent process, appearances, pleas, rules, orders, and other services necessary thereon, until the making up an issue inclusive, and also for dismissal or final judgment where either happens, or for confession of judgment, to the clerk of the court ten shillings ; for every continuance or reference of every cause after the second court, including all fees for every necessary service, four shillings ; for the court at which the cause is determined, including all fees for every necessary service thereon, and entering final judgment inclusive, eighteen shillings ; for every subpoena, provided the party insert no more than four witnesses in the same, two shillings ; for every execution or order of sale when necessarily issued and returned, including all services thereon, with taxing costs and copy and entering satisfaction, five shillings ; for every

Clerks' fees in the superior court. (They shall not exceed those of the clerks of the county courts, see 1806, c. 593, § 15.)

scire facias against bail with making an issue thereon or entering judgment without plea, including fees for every service necessary thereon, provided that the party cast shall not be subject to this, unless the scire facias is requisite and required by the plaintiff, eight shillings; for giving a copy of the record of any cause when demanded by either of the parties, six shillings; for every recognizance, two shillings; for every order or rule of court, made on matters foreign to the suit depending in court and copy thereof, when demanded, two shilling and eight pence; for searching a record out of court, one shilling; for a commission to take the examination of a feme covert or witnesses in any cause depending, the return thereon entering and all other services necessary thereon, three shillings; for a special venire facias in an action of ejectment, or where the bounds of lands shall come in question, when the said writ shall be issued, eight shillings; for a special verdict, demurrer or motion in arrest of judgment, and argument thereon, four shillings; for a writ of error, certiorari or appeal, with a transcript of the record and all services necessary thereon, eight shillings; for making out certificates of witnesses or jurymen's attendance, eight pence. The clerks of county courts of pleas and quarter sessions for every leading process returned to the first court, including all services together with dismissal or final judgment where either happens, ten shillings; for every presentment or indictment, six shillings; for entering and filing every recognizance, two shillings; for every continuance or reference of any cause after the second court, including all fees for every service necessary thereon, three shillings; for the court at which the cause is determined, including all services, seven shillings and six pence; for every subpœna, provided the party insert no more than four witnesses in the same, one shilling and six pence; for every execution or order of sale, when necessarily issued, including all services thereon, with taxing costs and copy and entering satisfaction, three shillings and nine pence; for every scire facias against bail, with making up an issue thereon or entering judgment without plea, including all fees for every necessary service thereon, provided that the party paying costs shall not be subject to this unless the scire facias is necessary and required by the plaintiff, six shillings; for giving a copy of the record of any cause when demanded by either of the

Fees allowed
clerks of county
courts.

(Varied and increased, see
1787, c. 276, s.
4—1790, c. 326,
s. 4—1792, c.
365, s. 8—1796,
c. 455, s. 12—
1797, c. 483, s.
2—1798, c. 501,
s. 3—1806, c.
703, s. 5—1819,
c. 1018, and by
resolution of
1792, 2s. 6d. for
seal.)

parties, four shillings and six pence ; for every order or rule of court made on matters foreign to the suit depending in court, and copy thereof, if demanded, two shillings ; for entering on the minutes the probate of wills, qualifying executors, making certificates, recording the will, and giving copy thereof, eight shillings ; for granting administration, taking bond, and all other services thereon, eight shillings ; for proving and recording at length, in bound books to be kept for that purpose, and filing an inventory account of sales or account current, exhibited by an executor, administrator or guardian, or for search, copy and certificates of the same, if the estate be under one hundred pounds, two shillings ; if above, four shillings ; for every marriage license and bond, eight shillings ; for ordinary license and bond, and all service necessary to be done therein, eight shillings ; for tavern rates, two shillings ; for searching a record out of court, one shilling ; for proving or entering acknowledgment of a conveyance of land or other estate, and certifying the same, with order of registration and examination of a feme covert without commission, two shillings ; for a commission to take the examination of a feme covert, or witnesses in a case depending in said court, entering the return thereon, and other necessary services, two shillings and four pence ; for a guardian or other bond taken in court including all services, six shillings ; for indentures for binding out apprentices, including all fees for every service necessary thereon, six shillings ; for a special verdict or demurrer, or motion in arrest of judgment, three shillings ; for a writ of error or appeal, with a transcript of the record and all services thereon, eight shillings ; for making out certificates of witnesses' attendance, eight pence ; for recording a mark or brand, and granting a certificate thereof if required, one shilling : And all other services done by the clerks of the county courts are hereby deemed *ex officio*, amongst which all notices or writs of *scire facias* against jurymen shall be considered, and the respective courts may allow reasonable satisfaction for the same annually, out of the county tax, not exceeding the sum of twenty pounds.

2. *And be it further enacted*, That the clerks of the several superior and county courts of this state, shall and they are hereby required to put up in some public place in their office an exact copy of the fees by this act allowed, and also in the court-house during the sitting of

Clerks to set up
in their office,
&c. a copy of
their fees.

each court, and for every such failure or neglect, they shall forfeit and pay the sum of five pounds, to be recovered by warrant to the use of any person who will sue for the same.

Sheriffs' fees.

(See 1777, c. 147, s. 1—1782, c. 177, s. 5—1793, c. 391, s. 1—1797, c. 484, s. 3—1802, c. 617, s. 1—1815, c. 888, s. 3—1816—c. 902, s. 1, & 1818, c. 978.)

3. *And be it further enacted*, That after the passing this act, the sheriffs in the several counties in this state shall and may receive for their services, the following and no other or larger fees, *to wit*, For every arrest, five shillings and four pence; for every bail bond, two shillings; for serving a copy of a declaration, one shilling; for serving a subpoena, for each person named in the same, two shillings and eight pence; for pillorying a person, five shillings; for an attachment, the same as for an arrest, and if further trouble by moving of goods to be taxed by the court; for executing a warrant of distress or an execution against the body or goods, two and a half *per cent.* for summoning, empanneling and attending on every jury on every cause in court, one shilling; when a special *venire* shall issue by order of court, for summoning each juror and attending the same, two shillings; putting a person in the stocks and releasing, five shillings and four pence; for every commitment, two shillings and eight pence; for every releasement, two shillings and eight pence; for serving a writ of possession of land eight shillings; for serving and attending on any person on a *habeas corpus*, *per day*, fifteen shillings; for calling every action in court, four pence; for imprisonment of felons or debtors or any other person, for each prisoner *per day*, for finding one pound of wholesome bread, one pound of good roasted or boiled flesh, and a sufficient quantity of fresh water, and every other necessary attendance and keeping the prisoner clean, one shilling and six pence.

Registers' fees.

(See 1797, c. 482—1807, c. 725, s. 4.)

4. *And be it further enacted*, That the register in each county in this state, shall and may take for registering each deed or grant including certificate thereof, four shillings; for every search, eight pence; for a copy of a grant or deed, four shillings; and for registering every other instrument of writings, four shillings.

Constables' fees.

(Increased by 1794, c. 414, s. 4, 22.)

5. *And be it further enacted*, That the sheriff, constable or other officer may take and receive the following fees: for serving every warrant, two shillings and eight pence; for serving an execution, two shillings and eight pence; for summoning each witness, one shilling and four pence; for every attachment, two shillings and eight pence; for

attendance of a constable every court when summoned by the sheriff, eight shillings *per* day; for whipping a negro by order of court or any justice, two shillings and eight pence.

6. *And be it further enacted*, That the rangers in each and every county in this state, may take and receive the following fees from the persons taking up strays, *viz.* for each and every horse, mare or gelding, including the certificate entered in his said office, five shillings; for each head of neat cattle, two shillings and six pence; for each head of hogs or sheep, one shilling.

Rangers' fees.
(See 1777, c. 119, s. 10—1719, c. 542, s. 2—1815, c. 892. & 1816, c. 909.)

7. *And be it further enacted*, That the coroner may take and receive for his services the following fees: for attending on every inquest, twenty-four shillings; and the same fees for discharging the duties of a sheriff as such sheriff himself would be entitled to by this act for performing the same services.

Coroners' fees.
(How paid, see 1803, c. 644.)

8. *And be it further enacted*, That it shall hereafter be lawful for the clerks of the superior and county courts where suits are determined and the fees not paid by the party from whom they are due, to make out executions directed to the sheriff of any county in this state, and the said sheriff shall levy the same as in other cases; (a) and to the said execution shall be annexed a copy of the bill of costs of the fees on which such execution shall issue, wrote in words at length without any abbreviation whatsoever; and all executions issuing without the copy of such bill of costs annexed, shall be deemed illegal, and no sheriff shall serve or execute the same.

For fees on suits ended, execution to be issued by the clerk.

Bills of costs on executions to be annexed without any abbreviation.

Executions without such illegal.

a [See 1811, c. 8 2.]

9. *And be it further enacted*, That if the clerk of any court, sheriff, register or coroner of any county, shall hereafter be guilty of any breach of the duties enjoined him by this act, either by his own confession or verdict of a jury, it shall on a second conviction be adjudged and deemed a misbehaviour in office, for which such clerk (b) or other officer herein mentioned, shall be removed from office. *Provided nevertheless*, That in case such clerk or other officer shall be dissatisfied with the determination of the county court, he may appeal to the superior court of the district in which he resides; in which case there shall be a trial by jury, where if the suspension of the county court shall be confirmed, the said clerk or other officer as aforesaid, shall ever after be rendered incapable of acting in the said office in any county in this state.

Penalty for misbehaviour of the clerk, sheriff, register or coroner.

How to be adjudged.

b [See 1800, c. 563.]

10. *And be it further enacted*, That where any sheriff Sheriffs, &c. to

make deeds for property sold under execution; though out of office. (Obsolete.)

If dead, &c. his successor to convey.

(See provisions of 1799, c. 538.)

or coroner has heretofore sold any lands in obedience to executions or writs of *renditioni exponas* to him directed, and not have executed deeds for the same, such sheriff or coroner, though he may be now out of office, shall, and he is hereby required to seal and execute a deed of bargain and sale for such lands to such person or persons who have purchased at vendue and paid the money for the same; and in case any sheriff or coroner having sold any lands as aforesaid, and hath since died or removed out of the state, then his successor in office is hereby required and empowered to make such conveyance as is herein next before directed. (c)

CHAP. 224.

An act for allowing salaries to the succeeding officers of state, and repealing so much of an act, entitled, an act for allowing salaries to the governor, secretary and other officers of state, and other purposes, as comes within the purview of this act.

Duty of private secretary. (See 1806, c. 702.)

1. *Be it enacted, &c.* That the governor for the time being shall appoint a private secretary, who shall enter into books for that purpose, all such letters written by and to the governor as are official and important, and such other letters as the governor may think necessary; which book or books shall be laid before the next general assembly, and by the clerks carefully preserved in their offices

CHAP. 225.

(See 1795, c. 435—1801, c. 575, & 1808, c. 739.)
a [1784, c. 204.]

An act to explain, amend and supply the deficiencies of an act passed last assembly at Hillsborough, entitled, An act to regulate the descent of real estates, to do away entails, to make provision for widows, and to prevent frauds in the execution of last wills and testaments, (a) and for directing how deeds of gifts and bills of sales of slaves shall be executed, authenticated and perpetuated.

1. WHEREAS doubts have been suggested that the law referred to in the title of this act leaves it at least uncertain whether brothers of the half-blood shall be entitled to succeed to the inheritance in the same manner as sisters do where there is no brother, nor the issue of any such: To remedy such doubts,

Explanation of a part of the former act in regard to the half blood.

2. *Be it therefore enacted, &c.* That in the third section of the said act (b) it was the intention of the legislature to let in the brothers (c) of the half-blood, equally with

b [1784, 2. 204, s. 3.]—c [See 1795, c. 435—1808, c. 739.]

the brothers of the whole blood, and for want of a brother or brothers, or any lawful issue of such brother or brothers, then to the sisters as well of the half as of the whole-blood.

3. And whereas by the seventh section of the said act, real estates actually purchased or otherwise acquired by any intestate, are to descend to the father if living, but if dead then to the mother of such intestate, and her heirs, by which the descent may be altered by the accident of death, and the paternal line which is favored in all other instances may be deprived of the inheritance by such accident: For remedy whereof, *Be it enacted*, That in case of the death of any person intestate leaving any real estate actually purchased or otherwise acquired, and not having any heirs of his body nor any brother or sister or the lawful issue of such, then such estate shall be vested in the father of such intestate if living, but if dead, then in the mother for life, and after the death of the mother, then in the heirs of such intestate on the part of the father. (a) and for want of heirs on the part of the father, then in the heirs of the intestate on the part of the mother forever.

Where there is no issue, nor brother or sister, or the issue of such, land shall vest in the father if living, if dead then in the mother, &c.

α [See 1784, c. 204, s. 7—1795, c. 435—1808, c. 739.]

4. *And be it further enacted*, That such part of the personal estate of any deceased person as may be laid off for the widow, as directed by the eighth section of the before recited act, (b) and shall consist of slaves, shall be laid off to such widow for life only, and after her death, shall go according to the statute of distributions; (c) and every widow of any deceased person before receiving into her possession any such slaves, shall give bond to the county court in the value thereof, that such slaves with their increase shall be returned to the executors or administrators of her deceased husband immediately upon her death, free of all charges and expenses whatsoever: *Provided always*, That where there are no lawful descendants of the deceased, the widow shall have an absolute estate in such slaves, any thing herein to the contrary notwithstanding.

Widows to have life estate only in slaves.

β [1784, c. 204, s. 8.]

γ [Repealed by 1787, c. 271]

Proviso.

5. And whereas the attestation of witnesses to wills and testaments required by the before mentioned act, (a) is intended to prevent frauds and impositions by the will of persons hastily drawn up in their last sickness, or from their want of sufficient knowledge for that purpose, and it may be proper to make exceptions from that rule in particular cases: *Be it therefore enacted*, That when

In what cases a will in the hand writing of the deceased may be valid, though there be no subscribing witnesses.

α [1784, c. 204, s. 11.]

any last will shall be found among the valuable papers or effects of any deceased person, or shall have been lodged in the hands of any person for safe-keeping, and the same shall be in the hand-writing of such deceased person and his name subscribed thereto, or inserted in some part of such will, and if such hand-writing is generally known by the acquaintances of such deceased person, and it shall be proved by at least three credible witnesses that verily believe such will and every part thereof is in the hand-writing of the person whose will it appears to be; then and in that case such will shall be sufficient in law to give and convey a sufficient estate in lands, tenements and hereditaments, any thing in the before recited act to the contrary notwithstanding.

Probate of wills admitted in evidence to prove devises of lands, and attested copies, &c. may be received.

a [See 1789, c. 307, s. 1.]

b [See 1802, c. 623.]

Proviso where fraud suggested.

c [Validity to be tried by jury—see 1789, c. 308, s. 1.]

What necessary for a bill of sale of slaves.

d [See 1789, c. 315, s. 1, 2—1792, c. 363—1806, c. 701.]

All deeds of gift, &c. to be proved and recorded within nine months.

6. *And be it enacted*, That all probates of wills in the county courts, (*a*) as well those made heretofore as those which may be made hereafter, shall be sufficient testimony for the devise of real estates, and attested copies of such wills, or the records thereof by the proper officer, (*b*) shall and may be given in evidence in the same manner as the originals; any law or usage to the contrary notwithstanding: *Provided always*, That when any fraud may be suggested to have been committed in the drawing or obtaining any last will, or any irregularity in the executing or attestation thereof, the party making such suggestion shall and may insist upon the original will being produced to the court, if the same is to be found; (*c*) and the court wherein any suit is depending, and in which such will may be introduced as testimony, may compel all and every person or persons whether in office or otherwise to produce the same.

7. And whereas many persons have been injured by secret deeds of gift to children and others, and for want of formal bills of sale for slaves, and a law for perpetuating such gifts and sales: For remedy whereof, *Be it enacted*, That from and after the first day of June next, all sales of slaves shall be in writing, attested by at least one credible witness, or otherwise shall not be deemed valid; and all bills of sale of negroes and deeds of gift of any estate of whatever nature, shall within nine months after the making thereof be proved in due form and recorded; and all bills of sale and deeds of gift (*a*) not authenticated and perpetuated in manner by this act directed, shall be void and of no force whatsoever, any law to the contrary notwithstanding.

CHAP. 226.

An act directing the mode of proceeding against the real estates of (See 1789, c. deceased debtors, where the personal estate is insufficient for the 311—1791, c. payment of the debts. 352.)

1. WHEREAS doubts are entertained whether the real estates of deceased debtors in the hands of their heirs or devisees, should be subject to the payment of debts upon judgments obtained against the executors or administrators: In order therefore to remove such doubts in future, and to direct the mode of proceeding in such cases,

2. *Be it enacted, &c.* That in all suits at law where the executors or administrators of any deceased person shall plead fully administered, no assets, or not sufficient assets to satisfy the plaintiff's demand, and such plea shall be found in favor of the defendant, the plaintiff may proceed to ascertain his demand and to sign judgment; but before taking out execution against the real estate of the deceased debtor, a writ or writs of scire facias shall and may issue, summoning the respective heirs and devisees of such deceased debtor to shew cause why execution should not issue against the real estate for the amount of such judgment, or so much thereof as there may not be personal assets to discharge; and if judgment shall pass against the heirs or devisees or any of them, execution shall and may issue against the real estate of the deceased debtor in the hands of such heirs or devisees against whom judgment shall be given as aforesaid. (a)

In what cases, & how to proceed against the lands of deceased debtors.

Scire facias to be served.

a [See 1789, c. 311, s. 1—remedy for administrator against heirs.]

3. *Provided always, and be it further enacted,* That when any such heir or devisee shall be a minor and have a guardian, the scire facias shall be served on such guardian, but where the minor shall have no guardian, then and in that case, the court shall appoint a guardian to defend the suit for such minor.

What service in case of a minor who has a guardian.

4. *And be it enacted,* That when the heirs and devisees of any deceased debtor, or any of them, shall reside out of the state, so that writs of scire facias cannot be served on them, and shall have no guardians on which the same can be executed, then and in that case the sheriff shall return the fact to be so, and another scire facias shall issue, on which the same return shall be made if the parties still continue to reside without the limits of this state; on which second return, and likewise on every second return that the party or parties have been sum-

In case of an heir or devisee living out of the state, and having no guardian.

Proceedings on the second return.

moned and no appearance shall be made upon such summons, judgment shall be given against the real estate in the hands of such heirs or devisees.

Plea of fully administered not to be conclusive against the heirs or devisees, tho' found for the executor or administrator.

Collateral issue between the heirs, &c. and executors. (See 1810, c. 792.)

One devisee evicted may sue the others for a contribution.

5. *And be it further enacted*, That when any executors or administrators shall plead fully administered, no assets, or not sufficient to discharge the plaintiff's debt, notwithstanding that such plea should be found in favour of the defendant or defendants on the trial of the issue, the heirs or devisees shall be permitted to contest the truth thereof; and upon the plea of such heirs or devisees, that the executors or administrators have sufficient assets, or have wasted or concealed the same, the court shall order the trial of a collateral issue between the executors or administrators and such heirs or devisees; which, if found against the executors or administrators, the original plaintiff shall have execution not only against the goods and chattels of the deceased debtor, but against the proper goods, chattels, lands and tenements of such executors or administrators; any law or custom to the contrary notwithstanding.

6. And whereas it may so happen that the real estate of a deceased person may by will be distributed among several devisees, and the part devised to one of such devisees may be seized in execution, and sold, while the other devisees continue possessed of such part of the estate as the testator intended for them, and it is just and reasonable in such cases that all the devisees should bear an equal proportion of the loss: *Be it therefore enacted*, That it shall and may be lawful for any devisee so evicted by the sale of the devise to him as aforesaid, to bring his action at law against the other devisee or devisees for his or their proportion of the value of the land so sold as aforesaid, suggesting in his declaration the value of all the several devises, and the recovery against the other devisee or devisees shall be in proportion to the value of all the devises, which shall be proved on the trial without having any regard to the sum for which the estate of the evicted was sold.

CHAP. 227.

An act to empower the county courts of pleas and quarter sessions of the several counties in this state, to order the laying out public roads, and to establish and settle ferries, and to appoint where bridges shall be built, and to clear inland rivers and creeks.

1. *Be it enacted, &c.* That all roads and ferries in the several counties in this state, that have been laid out or appointed by virtue of any act of assembly heretofore made, or by virtue of any order of court, are hereby declared to be public roads and ferries; and that from time to time, and at all times hereafter, the courts of the several counties in this state shall have full power and authority to appoint and settle ferries, and to order the laying out public roads where necessary, and to appoint where bridges shall be made, and to discontinue such roads as are now or shall be hereafter made, as shall be found useless, and to alter roads so as to make them more useful as often as occasion shall require.

Roads and ferries already established, confirmed.

County courts' power over roads and ferries generally.

2. *And be it further enacted,* That all roads to be hereafter laid out shall be laid out by a jury of freeholders to the greatest advantage of the inhabitants, and as little as may be to the prejudice of inclosures, which laying out, and such damage as private persons may sustain, shall be done and ascertained by the same jury on oath, which oath shall run in these words, *to wit,*

Roads to be laid out by jury. (This section amended by 1813, c. 862.)

I, A. B., do solemnly swear that I will lay out the road now directed to be laid out by the court of pleas and quarter-sessions, to the greatest ease and advantage of the inhabitants, and with as little prejudice to inclosures as may be, without favour, affection, malice or hatred, and to the best of my skill and knowledge. So help me God.

Jury's oath.

And all damages hereafter to be thus assessed shall be deemed a county charge, and be defrayed from the tax on each county laid for contingent charges.

Damages assessed to be a county charge.

4. *And be it further enacted,* That all roads so laid off shall be deemed public roads, and shall be at the least twenty feet wide, and where to the overseers of roads it may be deemed expedient to make or repair causeways on the same roads, they shall be at least fourteen feet wide, and the earth necessary to raise or cover the said causeways shall be taken from each side of the causeway equally, and so as to form a drain on each side of the

What shall be the proper width of roads and cause-ways, &c.

Stumps & runners to be cut and cleared.

Width of bridges, [see 1786, c. 256, s. 1.]

Where the overseers are insufficient the courts to build bridges, &c.

Where bridges shall be necessary over a creek, &c. dividing two counties. (See 1786, c. 256, & 1817, c. 941.)

Contracts for bridges to be good against the justices and their successors.

Toll-bridges & cause-ways how built and regulated. [See 1818, c. 976.]

a [See 1813, c. 862, s. 2, and 1817, c. 939, s. 2.]

b [See 1817, c. 940, s. 3.]

said causeway : And the overseers of public roads are hereby directed to have cut and completely cleared all stumps and runners for the width of sixteen feet in the centre of the highways under their care, of which width necessary bridges through swamps and over small runs, creeks or streams, are hereafter directed to be made.

5. *And be it further enacted*, That where a bridge shall be necessary over any place where the overseer with his assistants cannot conveniently make it, the court of the county wherein such place shall be, is hereby empowered and required to contract and agree for the building, keeping and repairing thereof, and to levy the charge in their county ; and when bridges shall be necessary over any such creek or river which divides one county from another, the court of each county shall join in the agreement for building, keeping and repairing the same, and the charge thereof shall be defrayed by both counties in proportion to the number of taxables in each.

6. *And be it further enacted*, That all and every contract, agreement and order by the justices of the court of any of the counties aforesaid, entered into or made for or concerning the building, keeping or repairing bridges in such manner as to them shall seem most proper, shall be good against them and their successors.

7. *And be it further enacted*, That the justices of the courts through whose counties run large water-courses or creeks which from the rapidity of the water and width of the stream may be too burthensome to build bridges and keep them in repair by a tax on the inhabitants, it shall and may be lawful for the majority of the justices of such county where it may be necessary, to contract with builders to build toll-bridges or expensive causeways for each of which each court is hereby authorised and required to lay the toll to be paid on all persons, horses, carriages, and cattle passing over the same, (*a*) the revenue arising from which for such a number of years as the said courts may agree upon to be granted unto the builders of the said bridges, their heirs and successors, for the building thereof, which bridges being built under the direction of the said courts, and the revenue arising from the toll thereof so granted, the said builder or builders, his or their heirs or successors shall keep in constant repair at his or their sole expense. (*b*) in default of which on conviction they are hereby declared to forfeit all right and title to the toll allowed by the court.

8. *And be it further enacted*, That the court of the said counties shall annually appoint overseers of the highways or roads (*a*) who are by this act obliged to summon all male taxables from the age of sixteen to fifty, (*b*) (except such persons as are or shall be exempt from public services by the assembly) within their district, to meet at such places and times as to them shall seem convenient for the repairing or marking such roads as shall be necessary, and except such as are or have been heretofore by law excused from appearing at musters, and such as send three slaves or other three sufficient hands to work on the public roads; and whosoever shall upon such summons refuse or neglect to do and perform the duty therein, shall forfeit and pay the sum of five shillings (*c*) per day for each person so neglecting or refusing, to be recovered by a warrant from any justice of the county and paid by the sheriff or constable to the overseer, and by him to be expended in hiring other hands to work on said roads.

Overseers to be appointed annually.

Their duty.

Who liable to work.

a [See 1813, c. 859.]

b [See 1786, c. 256, s. 2.]

Penalty on persons summoned refusing to work, see 1786, c. 256.

c [Now 10s. see 1817, c. 95, s. 1.]

9. *And be it further enacted*, That any person refusing to serve as overseer on any road agreeable to the order of the county court in which he resides, shall forfeit and pay the sum of twenty pounds, to be recovered and applied as other fines and forfeitures by this act directed. *Provided*, That no person shall be compelled to serve as overseer of a road in any county more than one year in three. *Provided nevertheless*, That nothing herein contained shall be construed to exempt overseers of slaves from working on roads. *Provided also*, That the overseers shall give notice to each free person, or the masters, mistresses or overseers of slaves, what kind of tools they and each of them shall bring and work with on the roads at the time of summoning: and that the several persons summoned by the overseers to work on the roads as aforesaid, shall not be liable to any fine for not appearing and doing their duty unless they shall be so summoned three days before the day appointed for working.

Penalty for not serving as overseer.

Overseers of slaves not to be exempted from working.

Notice to be given by the overseer.

Hands to be summoned 3 days previously.

10. *And be it further enacted*, That it shall and may be lawful for an overseer, if required by the majority of the workmen on the road assigned him, to lay off the road in equal apartments for the ease of the labourers, who shall finish his or their parts in a time agreed on between him and each free person, master, mistress or overseer; and on default of any agreeing party, the overseer is hereby authorised to cause such part to be finished by

Labour how to be apportioned to the workers.

If work not performed, over-

seer may hire others, and charge.

Posts to be marked with directions where roads meet, &c.

Penalty on overseer not keeping them in repair—and on any person for removing them, &c.
a [See 1812, c. 846.]

Overseers to have the roads measured, and miles marked, &c.

Penalty for not keeping them in repair.

Penalty for barring or obstructing the roads.

Proviso for toll-gates,

hire of other persons to do the same, and thereon to tender his account, and demand payment, and on refusal to warrant for the same, and to recover the money to his own use: *Provided*, the time agreed upon shall not exceed ten days.

11. *And be it further enacted*, That all overseers of roads shall cause to be set up at the forks of all roads within their several districts, a post or posts with arms pointing the way of each and every road, with directions to the most public places to which they lead, with the number of miles from that place as near as can be computed; (a) and every overseer who shall neglect or refuse to do and keep the same in repair, shall forfeit and pay for every such neglect the sum of five pounds, to be recovered before any justice of the peace, and applied as other fines in this act are directed; and every person or persons who shall wantonly remove, knock down or deface the said arms, shall for every such offence forfeit and pay the sum of five pounds.

12. *And be it further enacted*, That the several overseers of the roads, within twelve months next after the passing of this act, shall cause the public roads within their districts respectively, to be exactly measured, where the same has not already been done, and shall at the end of each mile, mark in a legible and durable manner the number of such miles, beginning, continuing and marking the numbers in such manner and form as the courts of the counties shall severally and respectively direct; and every overseer shall keep up and repair such marks and numbers within his district; and every overseer neglecting or refusing to mile mark, or to repair the mile marks within his district, according to the intent and meaning of this act, for the space of thirty days after their appointment to office, shall forfeit and pay the sum of forty shillings, to be recovered by a warrant before any justice of the peace.

13. *And be it further enacted*, That if any person or persons whatsoever, shall erect or cause to be erected across any public road any bars, he shall be subject to pay to any person who may sue for the same the sum of five pounds, to be recovered before any justice of the peace, to the use of the person who may sue for the same. *Provided always*, That no gate on any toll-bridge shall be considered as liable to the fine hereby imposed, and no person shall turn, alter or change any public road unless

it be by the order of the court of the county, founded upon the report of a jury appointed and sworn as in the cases of laying off new roads, under the penalty of five pounds for each month such road is turned out of the old course without an order of court, to be recovered on a warrant before any justice of the peace by any person suing for the same, and that the old road shall in no case be shut up until the overseer shall certify to the court that the new opened road is in good and sufficient order.

14. *And be it further enacted*, That all overseers of roads who shall refuse or neglect to do their duty as is by this act directed, or who shall not keep the roads and bridges clear and in repair, or let them remain uncleared or out of repair for and during the space of fifteen days, unless hindered by extreme bad weather, such overseer shall forfeit for each and every such offence the sum of forty shillings over and above such damage as may be sustained, to be recovered by a warrant from any justice of the peace by any person taking out the same, and to be applied to his own use.

15. *And be it further enacted*, That from and after the passing of this act the courts of each and every county in this state shall have full power and authority, and they are hereby directed and required to compel all persons that now do or shall hereafter be appointed to keep a public ferry, or who shall own a bridge receiving toll within the said counties, to give good and sufficient security in the sum of five hundred pounds, payable to the chairman of the said court and his successors, with condition that he or they shall and will constantly find, provide and keep good and sufficient boats or other proper crafts, and keep such bridges in good repair as the case may be, and always to be well attended for travellers or other persons, their horses, carriages and effects over any river or creek; and if any person shall receive damage by any ferryman or keeper of a toll-bridge, not having complied with the condition of his bond, the person receiving such damage shall and may bring an action of debt against such ferryman or bridge-keeper on such bond in the name of the chairman, and recover for the non-performance of the said condition so much damages as he, she or they shall appear to have sustained, and thereupon take out execution for whatever shall be so recovered, and apply the same to his, her or their own use; and it shall and may be lawful for any person detained at any public ferry by

No person to turn a road without an order of court, &c. Penalty.

(See 1817, c. 957, s. 1.)

Penalty on overseers for not doing their duty, &c. see 1786, c. 250, s. 4 & 5.

Courts' power to compel ferry-keepers and owners of toll-bridges to give bond, &c. (See 1813, c. 862.)

How recovered in case of breach thereof.

Proviso, not to bar an action for personal damages suffered, see 1787, c. 273.

Commissioners to be appointed to inspect rivers, &c. and open and cleanse them, if for the benefit of the public.
a [Amended, see 1796, c. 460.]

Manner of doing it.

(See 1785, c. 242—1790, c. 331—1796, c. 460, s. 2—1809, c. 782—1812, c. 845.)
Fines how applied.

Repealing clause.

Exception in respect to certain rivers.

reason of the ferryman's not having sufficient boats, or other proper crafts and hands, or by neglecting to do his duty, by a warrant from a justice of the peace to recover of such ferryman the sum of five pounds for every such default or neglect. *Provided*, That any such recovery shall not be deemed to bar any action for personal damages suffered by any person or persons by reason of the insufficiency of said ferries and boats thereon, and bridges and causeways.

16. And whereas the opening and cleansing the inland rivers and water-courses within this state may tend to the ease of the inhabitants in the carriage of the produce of the country to market, and be of general utility, *Be it therefore enacted*, That the (a) majority of the justices of the county courts shall, and they are hereby authorised and empowered, where an inland river or stream shall run through the county of which they are justices, by order of court to appoint commissioners to view and inspect such river, and make out a scale of the expense of labour with which the opening and clearing the same will be attended, and if the same shall be deemed within the compass of the abilities of the county, and shall judge the burthen will be compensated by the utility, to appoint and authorise the commissioners to proceed in the most expeditious manner in opening and cleansing the same, by taking such hands off the making or repairing the public roads as the court shall permit and direct to be appropriated to such work, which hands shall be placed under overseers in companies, every overseer and company to have a distinct portion of such rivers or streams laid off by the court, which overseers and men of companies are hereby subject to the same rules and double the penalties as by this act imposed on the overseers and working hands upon public roads. *Provided*, No overseer or hands appointed to open and cleanse navigable rivers and streams shall be compelled to work on public roads.

17. *And be it further enacted*, That all fines and forfeitures mentioned in this act, and herein not applied, shall be applied to the use of the county.

18. *And be it enacted*, That all and every public act relative to roads and water-courses, and coming within the meaning and purview of this act is and are hereby repealed and made void to all intents and purposes whatsoever. *Provided nevertheless*, That nothing in this act contained shall be construed to alter the method of work-

ing on and clearing the rivers Neuse, Dan, Roanoke and Trent in the manner by the laws heretofore enacted is directed.

CHAP. 228.

An act to prevent unjust appeals, (a) and to empower the county courts in this state to provide for the safe-keeping the estates of idiots and lunatics.

[The case of appeals is provided for by subsequent acts.]

1. And whereas there are in divers parts of this state idiots and lunatics possessed of considerable property who waste and destroy the same, and make improvident dispositions thereof; *Be it therefore enacted*, That it shall and may be lawful for every county court in this state, whenever any such idiots or lunatics shall be within the jurisdiction thereof, to appoint him or her a guardian, taking bond for the faithful administration of the trust reposed in them, in the same manner as bonds are taken from the guardians of orphans; and such guardians when so appointed shall continue during the pleasure of the court, and shall have the same powers, to all intents, constructions and purposes, and shall be subject to the same rules, orders and restrictions, as guardians of orphans appointed by the court, such idiocy or lunacy to be ascertained by the inquisition of a jury by virtue of a writ to be issued by such court to the sheriff of the county for that purpose.

County courts may appoint guardians for the estate of idiots and lunatics.

(County courts have power to order a sale of their property, 1801, c. 569—Superior courts have the like power, 1817, c. 948.)

CHAP. 229.

An act to prevent the issuing of grants for lands on the western waters to such as have paid for the entry thereof in counterfeit certificates, and until the surveyor's fees shall be paid, and making provision for those who may have entered lands previously located by others.

(See 1783, c. 185, and acts here referred to.)

1. WHEREAS it hath been made known unto this general assembly by the entry-taker appointed under an act of assembly, passed at Hillsborough, on the eighteenth day of April, in the seventh year of American independence, entitled, An act for opening the land office for the redemption of specie and other certificates, and discharging the arrears due to the army, that large sums of counterfeit specie certificates have been paid into his office for entries of lands made under the said act, for

which grants have not yet been issued from the secretary's office as by the said act is directed ;

Entry-taker to deliver counterfeit certificates to the Secretary of state, with endorsement of the persons who paid them, and other particulars relating thereto.
(Obsolete.)

2. *Be it enacted, &c.* That from and after the passing of this act, it shall and may be lawful for the said entry-taker to deliver to the secretary of state all such counterfeit certificates so received with an endorsement of the persons by whom paid ; which certificates shall be accompanied with descriptive lists of each parcel of the counterfeit certificates as aforesaid, containing an account of each certificate, the board of auditors in whose name issued, and the person to whom said to be issued, the amount of certificates, by whom paid, with the quantity of land and number of entry, which shall be subject to a detention of grant as by this law directed, to which the entry-taker aforesaid, or his assistant in office, shall subjoin the following affidavit : I do swear that the above list is just and true to the best of my knowledge. So help me God. Which oath the secretary of state is hereby required and empowered to administer.

Secretary to stop the issuing of grants of lands, the entries of which have been paid for in counterfeit certificates, &c.
(Obsolete.)

3. *And be it further enacted,* That the certificates being returned into the said office of the secretary of state, under the restrictions before recited, it shall and may be lawful for said secretary to stop in his office the grants of lands for which the entries thereof have been paid for in counterfeit certificates, agreeable to the entry-taker's return aforesaid, until the same shall be exchanged by the person or persons claiming such grant, with good and true specie or other certificates to the same value, as by law directed, to the amount of such counterfeit certificates paid for the same, or with the paper currency of this state, emitted under the act of assembly, passed at Hillsborough, in the month of April, one thousand seven hundred and eighty-three, entitled, An act for emitting one hundred thousand pounds in paper currency, for the purposes of government for seventeen hundred and eighty three, for the redemption of paper currency now in circulation, and advancing to the continental officers and soldiers part of their pay and subsistence, and for levying a tax and appropriating the confiscated property for the redemption of the money now to be emitted.

Grants may be stopped for surveyors' fees.
(Obsolete.)

4. And whereas the surveyors appointed by the last general assembly to survey and lay off the lands on the western waters, from the far distant residence of the numerous proprietors, may find it impracticable to collect the fees for their services : *Be it therefore enacted, That*

where the persons claiming grants under their entries and surveys, shall not produce receipts of their having paid the surveyor or surveyors, then it shall and may be lawful for the secretary of state to demand and receive the same, and without discharge of which he is hereby directed to stop the said grants.

5. *And be it enacted*, That if any person or persons shall have (by virtue of the law commonly called the land law now in force in this state) located his or their entry to any spot or piece of ground on which any other person or persons shall have previously located an entry or entries, that then and in that case the person or persons making such entry or entries, or their assignee or assignees, shall be at full liberty to remove his or their warrant or warrants to any other lands on which no entry or entries have been previously specially located; and the surveyor or surveyors are hereby authorised and required to survey and make return thereof in like manner as for other surveys, and return as by law directed.

Subsequent entries may be removed to other lands.

(See act 1786, c. 257, s. 7.)

6. *And be it further enacted*, That in case it shall happen that there is not a sufficient quantity of tillable land within the boundaries laid off for the officers and soldiers of the continental line of this state, the deficiency shall and is hereby directed to be made up on any unappropriated lands within the limits of this state, any law to the contrary notwithstanding.

The bounds of continental land may be enlarged.

(Obsolete.)

(See the cession to the U. S.

1789, c. 299, & the acts there referred to.)

CHAP. 230.

An act to prevent persons holding offices of profit from enjoying seats in the general assembly.

1. WHEREAS it is contrary to the spirit of the constitution, and the principle of a genuine republic, that any person possessing a lucrative office should also hold a seat in the general representative of the people;

2. *Be it therefore enacted, &c.* That from and after the present session of the general assembly, every person holding a public office of profit, either by stated salary or commissions, (a) shall be and they are hereby declared to be incapable of being elected as members to serve in the general assembly, or to enjoy seats therein; and any member of the general assembly who shall accept any such office shall thereby vacate his seat, any law, usage or custom to the contrary notwithstanding.

Persons incapable of being elected members of assembly, &c. a [And every inspector, see 1777, c. 120, s. 10, & 1784, c. 207, s. 17.]

CHAP. 231.

(See 1784, c.
215.)

An act to amend an act, entitled, An act for dividing the county of Cumberland, passed at Hillsborough, last general assembly, and to confirm the proceedings of the justices of Moore county, and to alter the time of holding the courts of said county.

1. WHEREAS by some mistake in describing the dividing line of the late county of Cumberland, it has been directed to be laid off in a different manner from what was intended ; for remedy whereof,

Line how to be
run.

2. *Be it enacted, &c.* That the line for dividing the county of Cumberland shall begin at Cole's bridge, on Drowning creek, thence a direct line to the Cumberland and Chatham line, on the south side of the river Cape Fear ; and that Thomas Armstrong, William Seals and William Rand, or a majority of them, be and they are hereby appointed commissioners to appoint and agree with a surveyor for the purpose of running the said dividing line ; and the said line when so run shall be held, deemed and taken to be the dividing line of the said county of Cumberland, and that the lower county continue and remain by the name of Cumberland county.

Moore county
confirmed.

3. *And be it further enacted,* That all that part of the county lying to the north-west of the new line, shall be and continue by the name of Moore county.

CHAP. 232.

An act for extending the dividing line between the counties of Hyde and Tyrrel.

Commissioners
appointed to
run the line.

1. *Be it enacted, &c.* That Southy Rew, John Eburns, Israel Watson, James Anderson, William Blount and Nathaniel Jones, or any four of them, be and they are hereby appointed commissioners for the counties of Hyde and Tyrrel, and that they or any four of them shall meet on or before the first day of December, seventeen hundred and eighty-five, and jointly proceed to run and mark the said line as follows : Beginning where the counties of Beaufort, Martin and Tyrrel corner, thence a direct course to Long Shoal river, and thence the same course continued to Pamptico Sound.

Prior entries to
be valid.

2. *And be it further enacted,* That where any vacant lands may have been entered in either of the said counties over the said line in the Great Dismal Swamp, the same shall have preference and effect according to the

date of such entry, as fully as though it had been made in the county where the said land shall be on the extension of the dividing line.

Read three times, and ratified in General Assembly, }
the 25th day of November, A. D. 1784. }

SIGNED BY

RICHARD CASWELL, S. S.

WILLIAM BLOUNT, S. C.

At a General Assembly, begun and held at Newbern, on the nineteenth day of November, in the year of our lord one thousand seven hundred and eighty-five, and in the tenth year of the independence of the said state, being the first session of this assembly. Richard Caswell, Esq. governor.

CHAP. 233.

An act for increasing the jurisdiction of the county courts of pleas and quarter sessions, and of the justices of the peace out of court, and directing the time of holding the several courts of this state. (See 1786, c. 253.)

WHEREAS the extension of the jurisdiction of the courts of pleas and quarter-sessions of the several counties within this state, may tend to the more speedy furtherance of justice to the citizens therein:

1. *Be it therefore enacted, &c.* That from and after the passing of this act, the several county courts of pleas and quarter-sessions within this state, shall have, hold and exercise jurisdiction in all actions of trespass in ejectment, formedon in descender, remainder and reverter, dower and partition, and of trespass *quare clausum fregit*, any law to the contrary notwithstanding. (a) And from judgements thereon the same right of appeal is hereby granted to any person or persons thinking himself or themselves aggrieved by reason thereof, as in such case is provided by an act, entitled, an act for establishing courts of law and regulating the proceedings therein. (b) *Provided nevertheless*, That before the granting of any appeal whatever, the attorney praying the same shall certify to the court in writing, reasons for his motion, with his opinion that the same are good and sufficient in law why such appeal ought to be granted; which certificate as aforesaid, signed with the name of the said attorney, shall make part of the record, and be transmitted with the other transcript of the cause to the superior court as aforesaid.

Jurisdiction of county courts increased.

Appeals granted under certain restrictions. a [See 1777, c. 115, s. 56—1807, c. 712, s. 4.] b [1777, c. 115.]

In what cases
interest of 12 1-2
per cent. allow-
ed on appeals.

2. And whereas from the manner in which appeals from the county courts of pleas and quarter-sessions have been heretofore obtained in numerous instances, frequent injustice has happened to many just suitors from the delay incident to said appeals: For remedy whereof, *Be it further enacted*, That when any appeal prayed shall not be prosecuted, or the court before whom the said appeal may be determined shall affirm the judgment, then shall the appellant be decreed to pay to the appellee, twelve and an half *per cent.* interest from the passing of the judgment in the county court by which such appeal may have been granted; (a) and the bonds taken for prosecution of appeals with effect shall hereafter make part of the records sent up to the superior court, on which judgment may be *instantly* entered up against the appellant and his securities; and no appeal in any cause or court whatsoever shall be abated by the death of either plaintiff or defendant, but may be proceeded on by application of the heirs, executors, administrators or assigns of either party. (b)

Bonds for prosecution to form part of the records transmitted.

No appeal to be abated by death.

a [See 1801, c. 574, s. 4—1807, c. 71.]

b [See 1789, c. 314, s. 6.]

Causes how continued.

3. *And be it further enacted*, That it shall not be lawful for any court to grant a continuance of any cause therein depending, but by consent of both parties, or on cause shewn by affidavit filed; (c) which cause shall be held sufficient in law for the said continuance.

Justice of the peace to have jurisdiction as far as 10l.

4. *And be it further enacted*, That single justices of the peace shall from and after the passing of this act, have jurisdiction of all debts and demands of ten pounds and under, where the balance due on any specialty, contract, note or agreement, or for goods, wares and merchandizes sold and delivered, or work or labour done; all which matters and things are hereby declared to be cognizable and determinable before any one justice of the peace out of court, and execution thereon may be awarded as directed by the aforesaid recited act, entitled, *An act for establishing courts of law, and regulating the proceedings therein*, (d) subject nevertheless to the appeal of any party as by the said act is provided. (e) *Provided always*, That judgments given by any one justice of the peace, execution thereon shall be stayed in the following manner, *to wit*, for all sums not exceeding forty shillings, twenty days; for all sums above forty shillings and not exceeding five pounds, sixty days; and for all sums above five and not exceeding ten pounds, one hundred and twenty days: for the full and truly payment of which with

d [See 1777, c. 115, s. 62, & see 1786, c. 253, s. 7—1794, c. 414, s. 1—1802, c. 609, s. 1, & 1803, c. 627, s. 1.]

Appeal.

e [1777, c. 115, s. 63.]

Execution stayed.

costs and interest till paid, the party requiring such stay of execution shall give sufficient security if required ; and if the said judgment shall not be discharged at the time to which the execution thereon may have been stayed, then it shall and may be lawful for any justice to issue execution in the usual form for the same against the principal and his securities.

Execution against principal & his securities.

5. *And be it further enacted*, That every coroner in this state at the next court for their respective counties, shall before the justices in court, enter into bond with two or more good and sufficient securities, in the penalty of one thousand pounds, payable to the governor or his successors, with condition for truly and faithfully executing the office of coroner ; and upon a breach of the said condition the bond may be assigned and sued for until the whole penalty is recovered, in like manner as the bonds given by sheriffs.

Coroner to give bond.
(See 1777, c. 118, s. 14.)

6. *And be it further enacted*, That in all trials for the recovery of debts contracted previous to the fourth of July, one thousand seven hundred and seventy-six, no interest shall be allowed from that period until the fourth day of July, one thousand seven hundred and eighty-two, where the debtor shall prove the creditor had refused to receive the current money of the state, or had removed him or herself, or remained out of the state within the aforesaid time, or continued within the British lines.

No interest allowed for a specified time.

CHAP. 234.

An act for the regulation of commerce.

1. *And be it further enacted*, That Josiah Collins, William Littlejohn, John Gray Blount, John Wright Stanley and Spyers Singleton, esquires, be appointed commissioners for improving the coasting navigation ; and they, or any three of them, shall cause a survey to be made of the coast, and beacons or land-marks to be erected on such places and in such manner as they shall think most conducive to the information and safety of vessels coming on the coast ; and the expense of such survey and beacons or land marks shall be paid them by the collectors, by order of the commissioners of navigation, out of the tonnage duties that shall be collected in the ports of Roanoke, Bath, Beaufort and Currituck, after the necessary expense of keeping up the stakes has

Commissioners to improve the coasting navigation.
(Obsolete.)
(See 1783, c. 194.)

been deducted; to which surveys and concomitant expenses, the commissioners of the several ports mentioned, shall contribute respectively in the same proportions they contribute to the stakeage of the Swash.

2. *And be it further enacted*, That the commissioners of navigation heretofore appointed by law, and their successors, shall have full power to cause the navigation from the town of Beaufort to Neuse river, to be staked as other channels, any law to the contrary notwithstanding.

Power of former commissioners as to the navigation from Beaufort to Neuse river. (The other parts of this act superseded by the constitution of the U. S.)

(See 1786, c. 250.)

CHAP. 235.

An act to secure and quiet in their possessions all such persons, their heirs and assigns, who have purchased, or may hereafter purchase lands and tenements, goods and chattels, which have been sold, or may hereafter be sold by commissioners of forfeited estates, legally appointed for that purpose.

WHEREAS by force of sundry acts of the general assembly of this state heretofore passed, commonly called confiscation acts, the lands and tenements, goods and chattels, rights and credits of divers persons specified by name, and all other persons in circumstances similar to those so specified, are declared to be forfeited to this state, and in virtue of the said acts, and of other acts for carrying into effect the said acts, commissioners have been from time to time appointed for seizing all such forfeited estates and making sale thereof for the use and benefit of the said state: and whereas it is declared by the said act that the sales of the said commissioners shall be good and valid in law, and shall vest in the purchaser, his heirs and assigns, as good and absolute estate in fee-simple in all such property so purchased as the person from whom sold possessed on the fourth day of July, one thousand seven hundred and seventy-six, or at any time since; and the said acts do further provide, that in case any estate so sold should afterwards appear to have been the property of infants, *feme covert*s, or any person or persons not described or meant to be included in the penalties of the said confiscation laws, that then and in such case, such favorable circumstances being made to appear to the satisfaction of the general assembly, such person or persons should be entitled to receive all such sums of money or monies which such estate or estates did sell for, together with an interest of six *per cent.* thereon: And

whereas in virtue of the said acts of the general assembly commissioners have been appointed, and in pursuance of their duty have actually sold and disposed of great part of the estates so heretofore forfeited and vested in this state to the citizens thereof and of the United States; and it is highly reasonable and just that all such purchasers, their heirs and assigns, should be protected from expensive and vexatious law-suits which have been or may be commenced against them or any of them by the obnoxious and disqualified persons so specified in said acts, commonly called confiscation acts, or by any other person or persons whatsoever claiming by, from or under them or any or either of them, by any act, deed, gift, will or other conveyance whatsoever, unless the same were actually made *bona fide* before the fourth day of July, one thousand seven hundred and seventy-six: Wherefore,

1. *Be it enacted, &c.* That persons holding or deriving titles to any real or personal estate, under a sale or sales lawfully made by commissioners of forfeited estates legally appointed for such purposes, shall be deemed not liable to answer any suit or suits in law or equity, which hath been, or may be commenced by any person or persons so specified or described in the said confiscation acts as inimical to the states, or by any person or persons whatsoever claiming by, from or under them or any or either of them; and that the courts respectively shall and may, and they are hereby required in all such cases, upon the motion or affidavit of the defendant or other person, and by his deeds and other documents making it appear that he holds and derives his title to the lands or chattels in question under and by the sale of a commissioner or commissioners of forfeited estates legally appointed, to dismiss all such suitors, suits, action or actions, at the proper costs and charges of the plaintiff or plaintiffs, any law, usage or custom to the contrary notwithstanding.

Persons holding titles under sales lawfully made by commissioners of forfeited estates not liable to answer any suit by a person specified or described in the confiscation acts, &c. or any claiming under him, &c. How such suits to be dismissed.

CHAP. 236.

An act to amend an act, entitled, an act for opening the land-office and other purposes.

(See 1783, c. 185, and acts there referred to.)

WHEREAS it is found altogether impracticable for the different surveyors within this state to compleat their surveys in their districts and counties agreeable to an act

of the general assembly passed at Hillsborough, in the year seventeen hundred and eighty-three.

Time granted
for the comple-
tion of surveys.
(Obsolete.)

1. *Be it enacted, &c.* That in order to secure the rights of those persons who have entered lands with any of the entry-takers, or may be possessed of warrants granted by the secretary of state to the officers and soldiers of the continental line of this state, a further indulgence of eighteen months be granted the surveyors, in order to compleat the surveys on such warrants as may have issued previous to the passing of this act, any law to the contrary notwithstanding.

Orders to entry-
takers.
(This section
repealed by
1795, c. 445, s.
7.)

2. *And be it further enacted,* That in all cases where the office of entry-taker shall become vacant, that then and in that case, the successor in office shall and is hereby authorised and required to make out and issue all warrants which shall not have been made out; that all warrants so made out and issued, shall be and are hereby made as valid as if they had been executed by the entry taker who received the entry. *Provided,* That such entry taker shall not be accountable for such monies as by law directed to be received for entries of land made previous to his appointment to the office.

CHAP. 237.

An act to amend an act passed at Newbern, in November, one thousand seven hundred and eighty-four, entitled, An act to describe and ascertain such persons who owed allegiance to this state, and to impose certain disqualifications on certain persons therein described.

Persons incap-
able of office.

1. *Be it enacted, &c.* That every person who at any time since the fourth day of July, one thousand seven hundred and seventy-six, attached himself to, or traitorously corresponded with, or in any manner aided or abetted the enemies of this state in prosecuting the late war, shall be incapable of holding or exercising the office of governor, counsellor of state, delegate in congress, judge or justice of the peace, member of the general assembly, or any office of honor, profit or trust whatsoever within this state.

Penalty for soli-
citing, accept-
ing or exercis-
ing any.

2. *And be it further enacted,* That any person of the above description offering himself as a candidate, or consenting to serve as a member for any county in the general assembly, or who shall hereafter offer as a candidate for, or accept of or qualify to either of the aforementioned offices, or holding either of the said offices shall presume

to continue to exercise the same ten days after being served with an authentic copy of this act, or after the expiration of three months from the ratification hereof, shall forfeit and pay the sum of five hundred pounds current money for every such offence, to be recovered in any court of record within this state; one-half to be applied to the use of the person suing for the same, and the other half to the use of the state. *Provided nevertheless,* Proviso.

That nothing herein contained shall be construed to exclude any of the good citizens of this state from holding and exercising any of the aforesaid offices, who were under the necessity of receiving protection from the late common enemy, and who after receiving that protection did not stay voluntarily with them, nor took an active part in any manner, by furnishing them willingly with provisions or bearing arms against this state, or accepting any appointment under the said enemy, civil or military, and the said unfortunate citizens having only received protection as aforesaid, and having renewed their allegiance to the state in good time, are hereby restored to the rights and privileges of citizens as fully as if they never had received protection from the common enemy as aforesaid, any law to the contrary notwithstanding.

Not to affect those who took protections from necessity, and took no active or voluntary part in favor of the enemy.

CHAP. 238.

An act directing that marriage settlements and other marriage contracts, shall be registered, and for preventing injury to creditors.

WHEREAS marriage settlements and other marriage contracts, binding the estates of the husbands, have been frequently made and kept secret, whereby the possessors upon the credit of their apparent property have been enabled to contract great debts, to the manifest deception and injury of their creditors: For remedy whereof for the future,

1. *Be it enacted, &c.* That all marriage settlements and other marriage contracts, whereby any money or other estate shall be secured to the wife or husband, heretofore made, and which have not had their effect, shall be proved in the same manner as other deeds, and shall be registered in the proper county on or before the first day of May next; and all marriage settlements and other marriage contracts hereafter to be made, shall be proved within six months after the making thereof, and regis-

Marriage contracts to be proved and registered.

Time enlarged.

a [See 1787, c. 279, s. 3—1799, c. 540, s. 1, and 1814, c. 875, s. 2—1791, c. 348.]

What necessary to make a marriage settlement, &c. good.

Proof requisite.

Proviso in regard to legacies, &c.

tered within one month thereafter; and all marriage settlements, and other marriage contracts not proved and registered according to the directions of this act, shall be void against creditors, any law to the contrary notwithstanding. (a)

2. And for preventing injury to creditors, *Be it enacted and declared*, That no marriage settlement, or other marriage contract shall be good against creditors, where a greater value is secured to the intended wife and the children of the marriage, or either of them, than the portion actually received with the wife in marriage, and such estate as the husband at the time of his marriage shall be possessed of, after deducting the just debts by him then due and owing; and in case of any suit upon any such marriage contract, where any creditor or creditors shall be a party, the burthen of the proof shall lie upon the person or persons claiming under such marriage contract. *Provided always*, That if any legacy or legacies shall be given to the wife in general words and not in trust, or a distributive share or shares of any intestate's estate shall fall to her during her coverture, such legacies and distributive shares (in case the estate of the husband and wife shall not at the time of the marriage be of sufficient value to make good the marriage contract) shall be held, deemed and taken as part of the portion received with the wife, and shall be secured to those claiming under such marriage contract, any thing herein contained to the contrary notwithstanding.

CHAP. 239.

(See 1799, c. 530, & 1804, c. 663.)

An act for the relief of the officers, soldiers and seamen, who have been disabled in the service of the United States during the late war.

WHEREAS it hath been recommended by the United States in congress assembled, that uniform provision be made in the several states for officers, soldiers and seamen who have been disabled in the service of the United States:

A list of the invalids to be made by the comptroller, & sent to the Secretary at War. (Obsolete.)

1. *Be it enacted, &c.* That a complete list shall be made out by the comptroller of this state of all the officers, soldiers or seamen resident in this state, who have served in the army or navy of the United States, or in the militia in the service of the United States, and have been disabled in such service so as to be incapable of military du-

ty, or of obtaining a livelihood by labour. In this list shall be expressed the former pay, the age and disability of each invalid, also the regiment, corps or ship to which he belonged; and a copy of the same shall be transmitted to the office of the secretary at war, within one year after the sitting of this present assembly, and a like list of the invalids resident in this state shall from year to year be transmitted to the office of the secretary at war.

2. *Be it further enacted*, That no officer, soldier or seaman shall be considered as an invalid, or entitled to pay, unless he can produce a certificate from the commanding officer or surgeon of the regiment, ship, corps or company in which he served, or from a physician or surgeon of a military hospital, or other good and sufficient testimony, setting forth his disability, and that he was thus disabled while in the service of the United States.

Certificates proving disability to be produced. (Obsolete.)

3. *And be it further enacted*, That all the commissioned officers of the aforesaid description, disabled in the service of the United States, so as to be wholly incapable of military duty or of obtaining a livelihood, be allowed a yearly pension, which shall correspond with the degree of their disability compared with that of an officer wholly disabled; that all non-commissioned officers and privates within the aforesaid description, disabled in the service of the United States, so as to be wholly incapable of military or garrison duty, or of obtaining a livelihood by labour, be allowed a sum not exceeding five dollars *per* month; and all non-commissioned officers and privates as aforesaid, who shall not have been disabled in so great a degree, be allowed such sum as shall correspond with the degree of their disability compared with that of a non-commissioned officer or private wholly disabled. *Provided always*, That no officer who has accepted his commutation for half-pay shall be entered on the list of invalids, unless he shall have first returned his commutation.

Pensions to be proportionate to disability & rank. (Obsolete.)

Provided that commutation for half pay be returned.

4. *And be it further enacted*, That William M. Clure, Joseph Leech and Andrew Blanchard, in the district of Newbern; Samuel Dickinson, Joseph Blount and Lott Brewster, in the district of Edenton; James Gickie, John Fergus and James Read, in the district of Wilmington; Goodorum Davis, Nicholas Long and Charles Pasteur, in the district of Halifax; Wm. Courtney, John Taylor and John Estis, in the district of Hillsborough; Anthony Newman, Edward Yarborough and Lewis Beard, jr. in

Commissioners appointed to examine claims of invalids, to certify their disability, & transmit copies thereof to the comptroller. (Obsolete.)

the district of Salisbury ; Joseph Dobson, David Vance and Charles M-Dowall, in the district of Morgan ; Lardner Clark, Eusebius Bushnal and T. Molloy, in the district of Washington, be and they are hereby appointed commissioners for examining into the claims of all officers, soldiers and seamen resident in their respective districts, who have served in the army or navy of the United States, or in the militia in the service of the United States, and have been disabled in said service so as to be incapable of military duty or of obtaining a livelihood by labour, and to report whether the person producing a certificate as before required setting forth that he is an invalid be such in fact, and if such to what pay he is entitled ; whereupon the commissioners aforesaid shall give to the invalid a certificate, specifying to what pay he is entitled, and shall transmit a copy of each certificate to the comptroller aforesaid, whose duty it shall be to receive and record the same ; and the commissioners in each certificate shall express the age and disability of the invalid, also the regiment, corps or ship to which he belonged ; and the said commissioners, before entering on the duties of their appointment, shall take an oath before some justice of the peace for the faithful discharge of the same.

5. *And be it further enacted*, That every invalid shall annually apply himself to some magistrate of the county in which he resides, and take the following oath, *viz*.

Oath to be taken by invalids.

A. B. came before me, one of the justices for the county of _____ in the State of North-Carolina, and made oath that he was examined by the commissioners for the district of _____ appointed by the state for that purpose, and obtained a certificate setting forth that he served in _____, that he was disabled by _____, and that he now lives in the county of _____

Copy to be sent to the comptroller.

6. *And be it further enacted*, That a copy of each affidavit, drawn according to the above form, and dated, and attested by a magistrate, be sent by the said magistrate to the comptroller aforesaid, and that a counterpart of the same be given to the person taking it to be exhibited to the treasurer of the state.

Instructions to the comptroller & treasurer.

7. *And be it further enacted*, That the comptroller shall annually transmit to the treasurer an account of the persons whom he has registered as invalids according to this act, and who have been certified to him to be living with-

in the state on that year, and the sums to which they are respectively entitled, and the treasurer is hereby authorised and required to discharge their annual pensions accordingly.

CHAP. 240.

An act for the dividing the county of Guilford:

1. *Be it enacted, &c.* That from and after the passing of this act, the said county of Guilford be divided by an east and west line, beginning at Haw-river bridge, near James Martin's; and that all that part of the late county of Guilford which lies to the south of the said line, shall continue and remain a distinct county by the name of Guilford; and all that other part of the said county of Guilford which lies north of the said dividing line, shall thenceforth be erected into a new and distinct county by the name of Rockingham.

Division line to be run.

Rockingham established.

CHAP. 241.

An act to prevent persons from stopping or obstructing ways leading to houses of public worship.

WHEREAS it may happen that persons may be possessed of lands in such manner as to enable them to stop and obstruct the usual ways leading to houses of religious public worship;

1. *Be it enacted, &c.* That any person who shall under pretence of owning the land or lands adjoining or surrounding any church, meeting-house, or other house or houses of religious public worship, stop or obstruct, or cause the same to be done, the usual way or ways leading to or from any of the aforesaid places of public worship, or springs or wells thereby used, shall forfeit and pay the sum of five pounds for every such offence, to be recovered by an action of debt in any court of record (a) in this state; one-half to go to the person suing for the same, the other half to be applied to the maintenance of the poor of such county, any law or custom to the contrary notwithstanding. *Provided always,* That nothing herein shall subject any person to the penalty aforesaid, who shall surround any spring or well with a fence, if such fence shall not absolutely render a passage to such

Fine for obstructing ways leading to houses of worship, &c.

a [Before any justice, or by indictment, see 1816, c. 922.]

Proviso.

Provisoos.

spring or well impracticable. *And provided also*, That no surrounding any piece of land, through which any of the aforesaid ways shall lead, shall subject any person to the said penalty, if a passage shall be left to the church, meeting-house or place of religious public worship of the same width at least that such way was usually of. *And provided also*, That this act shall not be in force until the first day of April next.

CHAP. 242.

(See 1784, c. 227.)

An act to amend an act to empower the county courts of pleas and quarter-sessions of the several counties in this state, to order the laying out public roads, and to establish and settle ferries, and to appoint where bridges shall be built, and to clear inland rivers and creeks.

Power of justices extended.

1. *Be it enacted, &c.* That the justices of the county courts where any inland river or stream of water, is or shall be the line of the county whereof they are justices, shall have all the powers and authority given by the said act, the title whereof is above recited, for the purposes therein mentioned, to the justices of the county court of any county through which an inland river or stream doth run.

To remove obstructions.

a [See 1790, c. 331—1796, c. 460—1809, c. 782, & 1812, c. 845.]

2. *And be it further enacted*, That the justices of each of the said courts respectively, where any such inland river or stream (*a*) should run through the county, or be a line of the county whereof they are justices, shall have full powers and authority, where the same shall appear necessary and expedient to them, to direct the commissioners by them appointed in virtue of this act, and the said act the title whereof is above recited, to purchase or hire a flat, with a windlass, and the appurtenances necessary to remove loose rocks and other things which may by such means be more easily removed, and allow the same flat, windlass and appurtenances to be paid for out of the county tax. *Provided nevertheless*, That nothing in this act contained shall affect private property.

CHAP. 243.

(See 1793, c. 388—1798, c. 511—1810, c. 795—1815, c. 890.)

An act for ascertaining the salary and duties of the public printer.

1. *Be it enacted, &c.* That the public printer shall give a bond with sufficient security, to the governor for the

time being, conditioned for payment of double the sum Security for that may be advanced him if he does not well and truly performance. perform the duties of his office.

[The other parts of this act are repealed and useless.]

CHAP. 244.

An act to allow a further time for saving lots in the several towns with- in this state.

WHEREAS the time allowed by law for saving lots in the several towns of this state, will expire on the second day of June next;

1. *Be it therefore enacted, &c.* That a term of ninety-99 years to save nine years from and after the passing of this act be given town lots. to all persons who hold lots in any of the towns within this state, for the completing their buildings, agreeable to the respective acts of assembly in those cases made and provided, any law to the contrary notwithstanding.

CHAP. 245.

An act for annexing part of the county of Pitt to Beaufort county.

WHEREAS many of the inhabitants of the county of Pitt have petitioned to be annexed to the county of Beau- fort;

1. *Be it therefore enacted, &c.* That from and after the Division line. passing of this act, all that part of the county of Pitt, included in the following bounds, beginning at Craven county line, where it crosses Creeping-swamp, and running with Creeping-swamp and Checod-swamp to the mouth of Round-Island branch, then a direct course to the mouth of Pitch-Hole branch, then with the swamp to Bear creek, then down Bear creek to Tar river, then down the river on the north side to the mouth of Trant-er's creek, then up said creek to Martin county line, then with Martin, Beaufort and Craven lines to the beginning, be and the same is hereby annexed to and shall be and remain a part of the county of Beaufort: *Provided al- ways,* Nothing in this act shall be understood to prevent the sheriff of the county of Pitt from collecting all pub-

lic taxes now due in that part of said county which comes within the description of this act.

Read three times, and ratified in General Assembly, }
the 29th day of December, A. D. 1785. }

SIGNED BY

ALEX. MARTIN, S. S.

RICHARD DOBBS SPAIGHT, S. C.

Richard Cas-
well, Esq. go-
vernor.

At a general assembly, begun and held at Fayetteville on the eighteenth day of November, in the year of our lord one thousand seven hundred and eighty-six, and in the eleventh year of the independence of the said state, being the first session of this assembly.

CHAP. 246.

An act for raising troops for the protection of the inhabitants of Davidson county.

Allowance of
land to officers
& soldiers.
(Obsolete.)
(The other
parts of this
act are now use-
less.)

1. *Be it enacted, &c.* That every private to be raised by virtue of this act shall be allowed four hundred acres of land, to be laid off and allotted in some part of this state west of the Cumberland mountain, in full satisfaction of the half of the first year's pay that shall be due; and in the same proportion for the time that he shall serve over and above one year, in full satisfaction of one-half of the pay that shall be due him for such further service. And also the commanding officer of the troops shall be allowed two thousand acres of land, to be allotted as aforesaid, in full satisfaction of half the pay that shall be due him for the first year's service, and in the same proportion for any service over and above one year, that he shall perform; and the other officers belonging to the said troops, in like manner shall receive satisfaction for the one half of the pay that shall be due them, in lands in proportion to the quantum of pay that each officer shall be entitled to for the first half year's pay, whenever a proper board shall be appointed for the adjustment of their accounts.

CHAP. 247.

An act for appointing deputies from this state, to a convention proposed to be held in the city of Philadelphia, in May next, for the purpose of revising the federal constitution. (See the constitution of the U. S. page 58, and acts of 1789, c. 304, & 1794, c. 408.)

WHEREAS in the formation of the federal compact which frames the bond of union of the American States, it was not possible in the infant state of our republics to devise a system which in the course of time and experience would not manifest imperfections that it would be necessary to reform: And whereas the limited powers which by the articles of confederation are vested in the congress of the United States, have been found far inadequate to the enlarged purposes which they were intended to produce: And whereas congress hath by repeated and most urgent representations, endeavored to awaken this and the other states of the Union to a sense of the truly critical and alarming situation into which they must be unavoidably cast, unless measures are forthwith taken to enlarge the powers of congress, that they may thereby be enabled to avert the dangers which threaten our existence as a free and independent people: And whereas this state hath been ever desirous to act upon the enlarged system of the general good of the United States, without bounding its views to the narrow and selfish object of partial convenience, and has been at all times ready to make every concession to the safety and happiness of the whole, which justice and sound policy could vindicate:

1. *Be it therefore enacted, &c.* That five commissioners be appointed by joint ballot of both houses of assembly, who, or any three of them, are hereby authorised as deputies from this state, to meet at Philadelphia, on the first day of May next, then and there to meet and confer with such deputies as may be appointed by the other states for similar purposes, and with them to discuss and decide upon the most effectual means to remove the defects of our federal union, and to procure the enlarged purposes which it was intended to effect, and that they report such an act to the general assembly of this state, as when agreed to by them, will effectually provide for the same. Commissioners to be appointed to attend at Philadelphia, &c. Powers, &c. (Obsolete.)

2. *And be it further enacted,* That in case of the death or resignation of any of the said deputies, or of their declining their appointments, his excellency the governor for the time being, is hereby authorised to supply such vacancies, and the governor is required to transmit forth- Governor to supply vacancies, &c. (Obsolete.)

with a copy of this act to the United States in congress assembled, and to the executives of each of the states in the union.

CHAP. 248.

An act to make the securities therein named negotiable. (a)

a [Promissory notes made negotiable by 1762, c. 70.]

Securities negotiable as promissory notes, &c.

Indorsee or assignee may have an action on the case in his own name.

b [Action of debt where there is a seal, see 1789, c. 314, s. 3—a joint action by 1817, c. 937.]

Direction to executors, &c. in the distribution of assets.

Interest when to accrue.

WHEREAS it would contribute to the convenience of merchants, traders and other inhabitants, in the interchange of property which traffic makes necessary, that bills, bonds and notes, as well those with as those without seal, should be made negotiable :

1. *Be it therefore enacted, &c.* That all bills, bonds, or notes for money as well those with as those without seal, those which are not expressed to be payable to order or for value received, as those which are expressed to be payable to order and for value received, shall after the passing of this act be held and deemed to be negotiable, and all interest and property therein shall be transferable by endorsement, in the same manner, and under the same rules, regulations and restrictions as notes called promissory or negotiable notes have heretofore been : And the indorsee or assignee may have and maintain his action of the case for the recovery of the monies due him upon such bill, bond or note, notwithstanding any seal thereunto annexed, (b) in his the said indorsee's or assignee's own proper name, as suits have been heretofore had and maintained by indorsees or assignees of notes called promissory or negotiable.

2. *And be it further enacted,* That executors and administrators, in the payment of the debts of their testators and intestates, shall hereafter hold and consider debts due upon bills, bonds and promissory notes, whether with or without seal, and all settled and liquidated accounts signed by the debtor, as of equal dignity, and shall pay the same accordingly : *Provided always,* That executors and administrators shall in all other respects, except as aforesaid, have the same right of preference in the payment of creditors, which they have heretofore had and held under the laws then in force.

3. *And be it further enacted,* That all bonds, bills, notes, bills of exchange, liquidated and settled accounts, shall bear interest from the time they become due, provided that such liquidated and settled accounts shall be sign-

ed by the debtor, unless it shall be specially expressed that interest is not to accrue until a time specially mentioned in the said writings or securities: *Provided also*, That this act shall not extend to, or have any operation with respect to any bonds, bills, notes, bills of exchange, liquidated or settled accounts heretofore given or made.

4. *And be it further enacted*, That all bills, bonds and notes made payable on demand, shall be held and deemed to be due on demand made by the creditor, his agent or attorney, by suit or request, and shall bear interest accordingly. Bills, &c. on demand, their operation.

5. *And be it further enacted*, That all securities for the payment or delivery of tobacco, and all other specific articles, shall bear interest as monied contracts, *that is to say*, the articles shall be rated by a jury at the time they become due, and interest be paid by the debtors accordingly. *Provided always*, The act of limitation of this state shall apply to all bonds, bills and other securities hereafter executed, made transferable by this act, after the assignment or endorsement thereof, in the same manner as it operates by law against promissory notes: *And provided also*, That this act shall not be in force until the first day of May next. Specific contracts—articles rated—interest.

Provisoes—act of limitation to apply after assignment of notes, &c.

CHAP. 249.

An act to impose a duty on all slaves brought into this state by land or water.

1. *And be it further enacted*, That every person who shall introduce into this state any slave or slaves after the passing hereof, from any of the United States which have passed laws for the liberation of slaves, shall on complaint thereof before any justice of the peace, be compelled by such justice to enter into bond with sufficient surety in the sum of fifty pounds current money for each slave, for the removing of such slave or slaves to the state from whence such slave or slaves were brought, within three months thereafter; the penalty whereof shall be recovered, one half for the use of the state, the other for the use of the prosecutor, on failure of a compliance therewith; and the person introducing such slaves shall also in case of such failure, forfeit and pay the sum of one hundred pounds, to be recovered by any person suing for the same, and applied to his own use. Penalty, &c. on bringing slaves from certain states.

(See 1819, c. 988, s. 9, which lays a tax on negro traders of \$10 on each slave.)

[The other sections of this act are superseded by the constitution and laws of the United States.]

CHAP. 250.

See 1785, c. 235. An act to amend an act, entitled, an act to secure and quiet in their possessions all such persons, their heirs and assigns, who have purchased or may hereafter purchase lands and tenements, goods and chattels, which have been sold or may hereafter be sold by the commissioners of forfeited estates legally appointed for that purpose.

WHEREAS doubts have arisen whether the citizens of this state claiming property by any title whatsoever, which had been seized and sold by the commissioners appointed to sell the confiscated property, were enabled to claim, or commence and prosecute a suit or suits in any of the courts of law in this state for the aforesaid property, by reason of the aforementioned act:

Citizens may prosecute suits for confiscated property.

1. *Be it therefore enacted, &c.* That the citizens of this state are hereby declared to possess and enjoy the right and privilege to commence, prosecute and maintain any suit or suits in any of the courts of law or equity within this state, for any real or personal estate sold by any of the commissioners of forfeited estates: *Provided* the said citizens do not hold or derive their titles, by, from or under any person or persons named or described by some one of the laws commonly called the confiscation laws.

Proviso.

Commissioner to prosecute for estate claimed.

2. *And be it further enacted,* That in case any real estate should be deemed by a commissioner of confiscated property to be forfeited, and should be claimed by any citizen or citizens as not liable to confiscation, such commissioner shall not proceed to the sale thereof, but shall commence a suit for the recovery of such estate in the same manner as by law directed for the recovery of personal property withheld from him: and such suit shall be instituted in his name as commissioner of his own particular district for and on behalf of the state, and the same proceedings shall be had thereon as in other suits of the like nature.

(Obsolete.)

CHAP. 251.

(See 1793, c. 388, s. 2—list of salaries, c. 403; 1806, c. 702—1808, c. 744 and 751—1810, c. 795—1815, c. 890—1818, c. 973—1819, c. 963.)

An act for the support of government and for appropriating the revenues of the state.

WHEREAS it is proper that those who dedicate their time and abilities to the service of the public ought to be recompensed for the same:

1. *Be it therefore enacted, &c.* That the following annu-

al salaries, to be discharged in half yearly payments, and the following daily allowances, shall be the recompences of the several officers of this state hereafter named, *that is to say*, Annual salary to officers of government.

No. 1. To his Excellency the Governor seven hundred and fifty pounds. (a) a [Now \$ 2000; see 1817, c. 956.]

No. 2. To the secretary of state one hundred pounds, (b) in full consideration of all services and expenses incidental to his office, except such for which he is expressly allowed fees by law. b [Now \$ 600, by resolution.]

No. 3. To the private secretary one hundred pounds, (c) as a full recompense for all the duties which the said secretary by law or custom is obliged to perform. c [Now \$ 300, see 1806, c. 702, s. 1.]

No. 4. To each judge of the superior court of law and equity in this state, fifty pounds for each court he shall attend. (d) d [\$ 90 a court by 1819, c. 96, s. 12.]

No. 5. To the attorney-general of this state, forty pounds for each court he shall attend. (e) e [Repealed by 1818, c. 973, and a salary of \$100 given for his attendance on the superior court.]

No. 6. To the comptroller five hundred pounds, for all services incidental to his office. f [750 l.—see journal of 1790.]

No. 7. To the treasurer five hundred pounds. (f) g [\$ 1000—see 1810, c. 795, s. 3, and 1815, c. 890.]

No. 8. To the public printer six hundred pounds. (g) 2. And be it further enacted, That the following daily allowances shall be paid to the persons hereinafter mentioned, *to wit*, Daily allowan-ces.

1. To each of the members of the council of state, for each day's attendance twenty shillings. (h) h [\$3, see 1803 c. 751.]

2. To the clerk of the council, for each day he is employed the sum of twenty shillings.

3. To the door-keeper of the council of state, for each day he is employed eight shillings.

And the said annual salaries shall be paid as aforesaid in half yearly instalments, on warrants drawn by the governor, bearing date the last day of June for the first payment, and the last day of December for the second, unless otherwise specially provided in this act. How payable.

3. And whereas it is necessary to provide an adequate fund for the payment and punctual discharge of the said salaries and allowances; *Be it enacted*, That all and singular the monies which shall be hereafter levied and collected annually on a poll-tax, in pursuance of a general law for that purpose, shall, and the same is hereby appropriated as a fund for the regular payment of the said salaries, wages and allowances, and for the payment and recompense of all such officers of government as shall or Appropriation of taxes for the payment of the civil list,

may hereafter be put on the civil list of this state; and so shall remain, continue and be applied, and to no other use or purpose whatsoever.

Contingent
fund.

2. *And be it further enacted*, That the remaining revenues and sources of revenue shall be considered as the contingent fund, to be applied to the incidental charges and exigencies of government.

CHAP. 252.

An act to direct the method to appoint jurors and surveyors to run out disputed lands.

Surveyors to be
appointed if ne-
cessary.

1. *Be it enacted, &c.* That in all suits in the superior courts of this state wherein the bounds of land shall come in question, if it shall appear to the court necessary, such court may order two surveyors, one to be named by each party, to attend and run out and survey the lands in dispute, agreeable to the bounds and lines expressed in each party's title, and make three accurate plans of such surveys, and return the same to such court; which order such surveyors are hereby required to obey, and shall be allowed twenty shillings each, for every day they shall be travelling to and from attending the surveys, and performing the duty by this act required.

Their duty and
pay.

If the parties
shall so choose,
only one sur-
veyor to be ap-
pointed.

2. *And be it further enacted*, That if the parties shall agree to have but one surveyor, to go upon the land, the court shall order one surveyor to go upon the land, and perform the duties enjoined by this act, and shall return three plans in manner as aforesaid.

Former laws re-
pealed.

3. *And be it further enacted*, That all laws and parts or clauses of laws heretofore made that come within the purview of this act, shall be, and the same are hereby repealed.

[*The provision for a jury of view is repealed.*]

CHAP. 253.

a [See 1785, c.
233.]

An act to amend an act, passed at Newbern, in December, one thousand seven hundred and eighty-five, entitled, an act for increasing the jurisdiction of the county courts of pleas and quarter-sessions, and the justices of the peace out of court, and directing the time of holding courts in this state. (a)

Suits to be car-
ried on, not-
withstanding
the death of
parties.

2. *Be it enacted, &c.* That in future it shall and may be lawful for the heirs, executors, administrators or

guardians, to carry on every suit or action in courts after the death of either plaintiff or defendant, and may be proceeded on by application in the same manner as appeals are carried on, under an act passed the last session of assembly, entitled, An act for increasing the jurisdiction of the county court of pleas and quarter sessions, and of the justices of the peace out of court, and directing the time of holding the several courts of this state. (a)

a [See 1785, c. 233, s. 2, & see also 1798, c. 505—1799, c. 532—1805, c. 619—1789, c. 314, s. 6.]

2. And whereas the frequent abuses of attornies have occasioned distresses to many of the good people of this state; *Be it therefore enacted*, That it shall not be lawful for either plaintiff or defendant to employ in any matter or suit whatever more than one attorney to speak to any suit in court; and the courts in this state are hereby directed not to suffer more than one attorney as aforesaid in any matter whatever, to plead for either plaintiff or defendant to any suit, under the penalty of a violation of this act.

One attorney only to speak, &c.

3. *And be it enacted*, That in any matter or suit depending in court, it shall and may be lawful for either plaintiff or defendant to enter his own plea and defend his own cause, and that no instrument of writing which contains the substance, shall be lost or destroyed for want of form, any other law to the contrary notwithstanding.

Plaintiff or defendant may enter his own plea, &c.
No instrument lost for want of form.

4. *And be it further enacted*, That all fees to be taken by attornies in future, in any suits in any of the several courts of law and equity established in this state, shall be as follows, *to wit*, In any suit in equity the sum of ten pounds; in any suit in any of the superior courts where the title of lands shall come in question, the sum of five pounds; in all other suits originally commenced in any of the said courts on the law side, the sum of five pounds; (b) in all appeals from any other court to the said superior courts, the sum of five pounds; (c) in all suits in the county courts of pleas and quarter-sessions where the title of lands shall come in question, the sum of five pounds; in all other suits originally commenced in the said county courts, the sum of two pounds; in every appeal from the judgment of a justice of the peace to the said county courts, the sum of twenty shillings.

Attornies' fees.

5. *And be it further enacted*, That if any attorney or attornies shall presume to ask, take or receive, directly or indirectly, any other or greater fees than are by this act directed in all civil cases, it shall be deemed in such

b [40s. by 1806, c. 693, s. 15.]
c [Ibid.]

Attornies liable to prosecution for taking, &c. greater fees.

Judgment on
conviction.

Attornies to file
declaration
within the first
three days of
the term, &c.
a [Shall pro-
duce a written
power to ap-
pear, see 1798,
c. 496.]

Penalty for ne-
glect.

Jurisdiction of
justices 20*l.* and
under.
(See 1785, c.
233, s. 4, and
the acts there
referred to.)

Appeal.
(Obsolete.)

attorney or attornies a misdemeanor in his office or pro-
fession of an attorney, and such mal-practices being made
known to any of the courts within this state, such court
is hereby required to direct the attorney-general or the
solicitor, on behalf of the state, to carry on a prosecu-
tion by indictment for such mal-practice aforesaid; and
if any such attorney or attornies shall be thereupon con-
victed by the verdict of a jury, of taking any other or
greater fees than by this act are allowed, he or they shall
by the same court in which such conviction shall be had,
be thenceforth dismissed from his practice as an attor-
ney, for one year, in every court of law and equity with-
in this state.

6. *And be it further enacted*, That every attorney
when employed in any suit in any of the courts of this
state, (a) shall file his declaration in the clerk's office,
any time within the first three days of the term to which
the writ is made returnable, and on failure thereof such
suit shall be dismissed by the court, at the cost of the
plaintiff; which cost being paid by said plaintiff to the
clerk of the said court, he or they paying such costs in
consequence of a declaration not being filed in due time
as aforesaid, may warrant such attorney for all such costs
by him paid as aforesaid; and the receipt of the clerk
shall and may be given in evidence in support of such
claim; and the justice before whom such warrant shall
be tried, may give judgment and issue execution thereon;
and such attorney shall be further liable to the action of
such plaintiff, for such damages as he or they may have
sustained in consequence of such declaration not having
been filed as aforesaid.

7. *And be it further enacted*, That single justices of the
peace shall, from and after the passing of this act, have
jurisdiction of all debts and demands of twenty pounds
and under, where the balance due on any specialty, con-
tract, note or agreement, or for goods, wares and mer-
chandize sold and delivered, or work or labour done, all
which matters and things are hereby declared to be cog-
nizable and returnable before any one justice of the peace
out of court, and execution thereon may be awarded as
directed by an act, entitled, An act for establishing courts
of law, and regulating the proceedings therein; subject
nevertheless to the appeal of either party; which said
appeal shall be tried and determined by a jury of good
and lawful men as in court has heretofore been used,

the first court, and the determination thereon shall be decisive : *Provided always*, That judgments given by any one justice of the peace, execution thereon shall be stayed in the following manner, *to wit*, For all sums not exceeding forty shillings, twenty days ; and for all sums above forty shillings and not exceeding five pounds, sixty days ; for all sums above five and not exceeding ten pounds, one hundred and twenty days ; and for all sums above ten and not exceeding twenty pounds, six months ; for the full and truly payment of which, with costs and interest until paid, the party requiring such stay of execution shall give sufficient security if required, and if the said judgment shall not be discharged at the time to which the execution thereon may have been stayed, then it shall and may be lawful for any justice to issue execution in the usual form for the same against the principal and his securities. *Provided also*, That no suit shall be commenced in the first instance, returnable to any court, for any sum under twenty pounds.

Stay of execution, &c.

Execution how to issue.

8. *And be it further enacted*, That the constables of this state shall be appointed as usual, who shall enter into bond payable to the governor, with sufficient securities, with the court, in the sum of two hundred and fifty pounds, (a) for the faithful discharge of his duty ; and shall be entitled to the following and no other or greater fees for his services, *to wit*, For serving every warrant four shillings, for every execution four shillings, for summoning every witness two shillings, for every attachment levied five shillings, for every bail bond one shilling. (b)

Constable to give security.
a [500*l*. by 1804, c. 650, & £2000 by 1818, c. 980, s. 1.]
His fees.

b [See 1794, c. 414, s. 4, 22.]

9. *And be it further enacted*, That when it shall so happen, that an execution in the hands of any constable in consequence of a judgment from any justice of the peace, and there shall be no personal property in his county whereon to levy such execution, then and in all such cases it shall be the duty of the constable to levy such execution on the real estate of the person against whom it issued, and make return of such his proceedings to the next ensuing county court, that an order of such court may direct the sheriff of the county to dispose of such real estate, or so much thereof as the court may direct, according to law.

Executions leviable on real estates.
(Repealed, see 1794, c. 414, s. 19, 23.)

10. And whereas it is just and reasonable that those who employ the principal officers in law department in deciding their private litigations, should contribute somewhat more amply than the rest of the community towards

Taxes on suits.

their support; *Be it therefore enacted*, That for the future the following taxes shall be assessed on the proceedings in law and equity herein after particularized, *that is to say*, For every subpœna, or writ to answer to any bill in equity or in the courts of law, twenty shillings; for every writ for the removal of the entire record of any cause from any of the courts of law in this state into any other court of law or equity, twenty shillings; for every leading process returnable to any superior court of law and equity in this state, ten shillings; for every appeal from the judgment or determination of any inferior court of law in this state, ten shillings; for every writ of mandamus certiorari, or for the removal of the body of any person, or other writ to be granted on motion where the same is the original of any proceedings in court, fifteen shillings; for every leading process returnable to any court of pleas and quarter-sessions in this state, five shillings; for every appeal from the judgment or decree of any court of pleas and quarter-sessions or motion allowed instead of a writ of error, eight shillings.

Clerks' duty in collecting and accounting for taxes.

11. *And be it further enacted*, That the clerks of the respective courts from whence the aforesaid writs may issue, or whereon such appeals or motions may be granted or allowed, shall at the same time of such allowance, or at the time of such writ shall be prayed before the issuing thereof, receive the taxes hereby imposed on the same; and if it shall be at any time discovered that any writ has issued, or the record of any cause transmitted upon any appeal or writ of error, before the receipt of the tax thereon imposed by this act, the clerk so issuing or transmitting shall be deemed guilty of misbehaviour in office; and the said clerks respectively shall annually on or before the thirty-first day of December in every year, under the pain aforesaid, account with upon oath and pay to the public treasurer (*a*) of this state for the time being, all monies which he ought to collect by virtue of this act, and cause a copy of his account passed with the treasurer, specifying each particular tax, from whom received and for what purpose, and signed by the treasurer in his own proper hand-writing, to be posted against the wall of his court-house in the most public part thereof twenty days thereafter, and the same so posted to continue for three months, in order that it may be the more easily discovered whether he has neglected to receive any

a [Payable to the county trustee, see 1809, c. 769.]

tax which he ought to have collected, or has failed to account for any tax which he did receive.

12. *And be it further enacted,* That the clerk of each and every court of law and equity in this state, at the first court that shall be held after the first day of May next, or in case of any unavoidable hindrance the next court afterwards, shall give bond with approved security to the court whereof he is clerk, in the sum of two thousand pounds, conditioned for the due performance of the duties hereby enjoined him; which bond shall be transmitted to the treasurer, or otherwise the said clerk shall be liable and bound to pay a sum equal to treble the tax imposed by this act.

Clerks to give security for collecting & accounting for taxes on suits. (For their general bond, see 1777, c. 115, s. 3.)

13. *And be it further enacted,* That all and every act or acts, heretofore made, so far as they come within the purview or meaning of this act, are hereby repealed and made void; provided that this act shall not be in force until after the first day of May next.

Former laws repealed.

CHAP. 254.

An act to amend an act, entitled, an act to amend an act, entitled, an act for ascertaining what property in this state shall be deemed taxable property, the method of assessing the same and collecting public taxes. (See 1784, c. 195—1818, c. 999.)

1. *Be it enacted, &c.* That all land held by deed or entry, where there is no caveat, or by lease, or in right of dower, all town lots with certain improvements, shall be subject to the payment of public taxes.

What real estate subject to taxes.

CHAP. 255.

An act to compel certain officers therein mentioned to publish the application of the public monies, and allowances for insolvents. (See 1793, c. 387.)

WHEREAS it is just and right that the body of the people on whom taxes are laid, should know to what purposes the monies arising therefrom are applied and appropriated: And whereas no adequate means have been adopted to draw into view the annual state of the treasury, and the application of the public monies:

1. *Be it enacted, &c.* That the treasurer or treasurers shall form an accurate state of the treasury, which shall be laid before the general assembly of that year, and pub-

Treasury ac-

counts to be
stated and pub-
lished.

lished and bound up with the laws of that session, in which statement shall be specified the net produce of the several branches of revenue, the several allowances for insolvencies, and the arrears of any of the sheriffs or county treasurers, all allowances or drafts made by the general assembly, and warrants issued by the governor, shall be severally enumerated, briefly setting forth in whose favor they were made or drawn, and on what account.

Clerks to set up
a list of taxables
in the court
house.

2 And whereas it is found necessary to form some check against fraudulent and deficient returns of taxable property, and to prevent improper allowances for insolvents: *Be it enacted, &c.* That the clerk of each county shall at the next court after the returns of the taxable property are directed to be made, set up in some conspicuous part of the court-house an alphabetical list of the taxables and taxable property delivered or reported by the persons appointed to take the lists of taxable property, (a) and when any collector shall return his list of insolvents to be allowed by the court, he shall make oath that he hath been at the dwelling house or usual place of residence of the person or persons therein named, and that he could not find property of such person or persons sufficient to discharge their respective taxes, or any part thereof, (b) which list shall also be advertised by the clerk in the court-house, specifying each collector's district and return; and any clerk neglecting or refusing to perform the duties required by this act, shall for every such neglect or refusal forfeit and pay the sum of fifty pounds, to any person who shall sue for the same within six months.

Regulation in
case of insol-
vents.
a [See 1798. c.
506.]

b [See 1793, c.
385.]

Penalty on the
clerk for ne-
glect, &c.

Wardens of the
poor to publish
an account.

3. And whereas the poor have of late years considerably increased, and large sums have been annually levied for the charitable purpose of their support, of the due application of which the people have no account or knowledge: *Be it further enacted,* That the wardens of the poor shall hereafter every year, at the next court of their respective counties after the first day of June, publish and set up at the court-house, an account of the monies by them received by taxes or otherwise for the purposes aforesaid, with the use and application they have made of the same particularly specifying the expense of each pauper, with an account of the claims or such debts unpaid, if any, and to whom due, under the penalty of one hun-

dred pounds, to be sued for and recovered by action of debt, in the name of the chairman of the court of the county where such neglect shall happen, and applied to the use of the county. (a)

a [The county attorney to bring suit, see 1792, c. 361, s. 2.]

4. And whereas large sums are frequently levied for county purposes, which are within the management of the court or justices of each county: and whereas no money ought or can be levied as a tax, of which the people have not a right to know the application: *Be it enacted*, That the court of each county shall at the first session after the first day of June in every year, cause the proper officer to publish and set up in some part of the court house, an account of the monies received the preceding year by taxes or otherwise, stating also what application hath been made of the same, to whom paid, and what claims if any against the county remain undischarged.

County court to cause a list to be published of county charges, &c.

5. *And be it further enacted*, That the commissioners of the respective towns in this state shall annually publish an accurate list of the taxes levied and collected in such town, together with a list of each sum expended by said commissioners, and to whom paid, and for what purpose; and any board of commissioners failing to comply with the directions and intention of this act, shall forfeit and pay the sum of fifty pounds, to be recovered and applied in manner by this act directed for the recovery and application of other fines, which sum shall be levied of the proper goods and chattels of the said commissioners, or either of them.

Commissioners of towns to publish a list of taxes, &c.

Penalty for neglect.

6. *And be it further enacted*, That all acts and parts of acts which come within the purview of this act, shall be and they are hereby repealed and made void.

Former acts repealed.

CHAP. 256.

An act to amend an act, entitled, An act to empower the county courts of pleas and quarter-sessions of the several counties in this state, to order the laying out public roads, and to establish and settle ferries, and to appoint where bridges shall be built, and to clear inland rivers and creeks. (See 1784, c. 227, and the acts there referred to.)

WHEREAS by the before recited act the overseers of the roads are compelled to make small bridges, causeways, &c. where the county courts do not think proper to have the same built at the expense of their counties, and the said overseers are not authorised by said recited act to cut any timber to enable him or them to comply

with the requisitions of said act: For remedy whereof,

Overseers may cut timber, &c. (And by 1818, c. 973, may dig dirt, &c.)

Persons liable to work on roads. (See 1784, c. 227, s. 7.)

Repeal.

All offences against the act of 1784, c. 227, indictable, &c.

Overseer liable for neglect, until he make return to court.

1. *Be it enacted, &c.* That the overseers of the several roads within this state are hereby authorised to cut poles and other necessary timber, to enable him or them to comply with the duties enjoined them in repairing and making bridges and causeways, without incurring any penalty thereby.

2. *And be it further enacted,* That all white males between the ages of eighteen and fifty years (except such persons as are excepted in the before recited act) shall be liable to work on roads.

3. *And be it further enacted,* That so much of the before recited act as comes within the purview of this act is hereby repealed and made void.

4. *And be it further enacted,* That all offences committed or done against the purview of the aforesaid recited act, shall hereafter be prosecuted by indictment in any court having cognizance thereof; and all forfeitures shall be recovered by action of debt, bill, plaint or information; one-half to the use of the prosecutor, the other half to the use of the state, unless the same have been otherwise provided for by the said act.

5. *And be it further enacted,* That when any person appointed as an overseer of the roads in any county in this state, he shall be deemed and held liable for any neglect in working on the roads, until he shall have made return to the court of his county, and shall make it appear to their satisfaction he has done the duties of an overseer by law directed.

CHAP. 257.

(See 1777, c. 114, & 1783, c. 18, and act's there referred to.)

An act to prevent the obtaining of grants for lands lying in the western parts of this state, to the prejudice of the first enterers, and entered in the office lately established for receiving entries of claims of such lands, by an act, entitled, An act for opening the land-office for the redemption of specie and other certificates, and discharging the arrears due to the army.

WHEREAS it is the intent and meaning of the said act and of the act hereby revived and put in force, that the first enterers of the vacant and unappropriated lands, if specially located, therein described, shall have preference to all others in surveying and obtaining grants for the same, when such entries have been made: And

whereas divers persons have repaired to the land lying (Obsolete.) out of the inhabited part of this state, and have caused the same to be surveyed in virtue of entries made subsequent to the entries for the same lands and plats of such surveys to be returned to the secretary's office, have or are about to obtain grants for the same, to the prejudice of the first enterers: For remedy whereof,

1. *Be it enacted, &c.* That every first enterer of any tract of land specially located, lying in the western parts of this state, out of the inhabited parts thereof, shall be allowed the term of two years from the last day of the present session of assembly to cause the same to be surveyed, and to obtain grants thereon; and that all grants and surveys of land lying in the parts aforesaid, heretofore or hereafter to be made, or obtained within the said two years by any person upon lands previously or first entered by any other person, shall be and the same are hereby declared to be void and utterly of no effect.

Further time allowed for the survey, &c. of lands.
(Obsolete.)

2. And whereas it hath been found impracticable for the surveyors in the different districts and counties west of the Apalachian mountain, to make their surveys within the time limited by law; *Be it enacted*, That a further time of two years from and after the expiration of the limitation by law now existing, be allowed, in order that the surveyors may complete the surveys as by warrant to them directed.

Two years allowed for certain surveys.

3. *And be it further enacted*, That it shall not be lawful for the secretary of state, and he is hereby directed not to issue any grants for lands lying west of the Cumberland mountain until the end of the next session of assembly, grants allowed for military services, pre-emption and guard-rights excepted.

No grants to be issued for certain lands before the end of the next session.
(Temporary.)

4. *And be it further enacted*, That the farther time of twelve months shall be allowed to the officers and soldiers of the late continental line of this state, to locate and survey the lands allowed them by law.

Further time allowed for army locations, &c.
(Temporary.)

5. *And be it further enacted*, That the further time of two years shall be given for the registering military grants in this state.

And registering military grants.
(Temporary.)

6. *And be it further enacted*, That all deeds, grants and mesne conveyances not issued from the late lord Granville's office, shall be allowed a further time of two years for probate and registration; all which deeds, grants and mesne conveyances not issued from the lord Granville's office, although the time in which they ought to have

Further time for probate and registration.
(Time enlarged, see 1784, c. 203, s. 1, 2—1788, c. 291, s. 1, 2.)

been proved and registered may have elapsed, shall be as valid when proved and registered in pursuance hereof, as if the same had been done in due time, according to any former law.

Removed war-
rants.
(See 1784, c.
229, s. 5.)

7. *And be it further enacted*, That all surveys already made for removed warrants for lands actually entered in the land-office at Hillsborough, and removed on account of the lands entered being previously entered as the law directs, shall be good in law, provided such lands were at the time of such survey actually vacant, and that such survey on removed warrants shall not affect or injure the right of any lands entered and specially located in the office aforesaid, previous to such survey.

CHAP. 258.

An act for annexing part of the county of Craven to Pitt county.

WHEREAS many of the inhabitants of the county of Craven have petitioned to be annexed to the county of Pitt;

Division line.

1. *Be it therefore enacted, &c.* That from and after the passing of this act, all that part of the county of Craven, included in the following bounds, beginning at the Pitt line where Creeping swamp intersects the same, thence down the run or middle of the said swamp to the run or middle of the Clay-root swamp, thence down the run of the said Clay-root swamp to the run of Swift's creek swamp, thence up the run of the same to Isaac Gardner's ford or path across the same, thence a direct line to the lower landing on Grindal creek, which is in about half a mile of the said creek, thence down the said Grindal creek to the river Neuse, thence up the meanders of the said river Neuse to the mouth of Great-Cotentney creek, thence up the said creek to the mouth of Little-Cotentney creek, then up the same to the line of the county of Pitt, be, and the same is hereby annexed to, and shall be and remain a part of the county of Pitt. *Provided always*, Nothing in this act shall be understood to prevent the sheriff of Craven from collecting all public taxes that now are or may be due for the year one thousand seven hundred and eighty-six, in that part of the said county which comes within the description of this act.

Proviso.

CHAP. 259.

An act for adding part of Wake county to Franklin county.

WHEREAS it is represented to this general assembly that it would greatly add to the ease and convenience of a number of the inhabitants of Wake county, if that part of the said county lying east of Mockison swamp, was added to and made a part of Franklin county;

1. *Be it therefore enacted, &c.* That all that part of the county of Wake lying east of Mockison swamp, and a line running from the head of the westernmost prong thereof a north course to the Franklin line, be, and the same is hereby added to and made a part of Franklin county.

Part of Wake
added to Frank-
lin.

CHAP. 260.

An act for dividing the county of Bladen.

WHEREAS the extent of the county of Bladen, and different water-courses in the same, render it inconvenient and troublesome to many of the inhabitants thereof to attend the courts and general elections, and other public meetings appointed therein:

1. *Be it enacted, &c.* That from and after the passing of this act, the said county of Bladen be divided as follows: Beginning on Drowning creek where South-Carolina line crosses said creek, thence up said creek to the mouth of the Great-Swamp, thence a direct line to a point on the main road five miles westwardly of the bridge on said Great-Swamp as the road now runs, thence running a strait line to Cumberland county, touching at Stewart's mills, on Rock-fish; and all that part of the late county of Bladen lying east of said line, shall continue and remain a distinct county by the name of Bladen; and all that other part of the said county of Bladen lying west of said line, shall thenceforth be erected into a new and distinct county, by the name of Robeson.

Division line.

Robeson county
erected.

CHAP. 261.

An act to annex part of the county of Burke to Rutherford county.

WHEREAS by reason of a ledge of mountains that divide the waters of first Little-Broad river from the waters of Silver and Cain creeks, it is extremely difficult

for the inhabitants on the south side of the said ledge to attend at the court-house of the county of Burke; And whereas the inhabitants on the south side of the ledge aforesaid, have signified their desire to be annexed to the county of Rutherford;

Part of Burke
added to Ruth-
erford.

1. *Be it therefore enacted, &c.* That from and after the passing of this act, all that part of the county of Burke lying to the south-east of the aforesaid mountains so as to include all the waters of first Little-Broad river, shall be, and the same is hereby annexed to and declared to be within the county of Rutherford. *Provided nevertheless,* That nothing herein contained shall be construed to debar the sheriffs or other collectors of public taxes for the county of Burke, from collecting all monies that may be due at this time in that part of the said county, which is by this act annexed to the county of Rutherford; any law, usage or custom to the contrary notwithstanding.

CHAP. 262.

(See 1784, c.
207.)

An act to amend an act, passed at Hillsborough, in May, one thousand seven hundred and eighty-four, entitled, An act for regulating the pilotage and facilitating the navigation of Cape-Fear river.

WHEREAS it is necessary that the regulations established concerning the navigation and pilotage of Cape-Fear river should be altered and amended;

Power granted
commissioners
of navigation &
pilotage of Cape
Fear river.
[See 1784, c.
207, s. 11.]

1. *Be it therefore enacted, &c.* That the commissioners of the navigation and pilotage of the said river, or a majority of them, shall have and they are invested with full power and authority to make and establish such regulations and ordinances (not inconsistent with the constitution, and not otherwise provided for by law) as to them shall seem necessary from time to time, and for the enforcement of such ordinances may annex such fines to any breach thereof, as they shall deem adequate to the offence; provided that no such fine shall exceed the sum of one hundred pounds.

Appropriation
and recovery of
fines.

2. *And be it further enacted,* That all fines laid by virtue of this act for breach of the regulations aforesaid, shall be paid to the said commissioners or their successors in office, to be laid out for the improvement of the navigation of the said river; and the manner of recovering such fines shall be by application to some justice of the peace of New-Hanover county by any of the said com-

missioners for the purpose of enforcing the said regulations, or by any person conceiving himself aggrieved by the breach thereof; upon which application such justice shall issue his warrant to bring the offender before him, and if such offender shall be found guilty of the offence wherewith he is charged, the said justice shall enter up judgment against him for the penalty annexed to the said offence, and issue execution for the same. *Provided*, That any person considering himself aggrieved by such judgment, may appeal to the next court of New-Hanover county, first giving security for prosecuting the appeal in like manner as is directed by law upon other appeals from justices of the peace.

3. *And be it further enacted*, That the number of bar pilots for the river aforesaid be reduced to four, and that any two of them (and no more) may enter into partnership together; and that the number of river pilots be increased to six, who may by no means enter into partnership with each other.

The number of bar and river pilots.
Partnerships.

4. *And be it further enacted*, That each and every pilot of the said river shall keep at least one apprentice, and instruct him in the art and mystery of a pilot; and that each of the said pilots may keep two apprentices and no more, which said apprentices upon being authorised by the majority of the said commissioners, may pilot any vessel which their several masters are entitled to pilot, for the behoof and emolument of their said masters, without let or molestation; subject however to the same regulations as the said pilots are.

Apprentices to pilots.

5. *And be it further enacted*, That the said bar pilots shall take vessels over the bar to Fort Johnston only, and from the said fort to sea; and that the said river pilots shall take vessels from the said fort to Wilmington, and back again to the fort.

Bounds of bar and river pilots.

6. *And be it further enacted*, That when any vessel shall come over the bar before a pilot boards her, she shall pay only one-third fees for coming in; unless when it may happen the weather is so bad that no person can board a vessel, in which case if he shall hail her without the bar and she shall follow him into port, he shall be entitled to full fees.

If vessel comes over the bar before she is boarded, she shall pay only 1-3 fees, &c.

7. *And be it further enacted*, That all laws and clauses of laws which come within the purview of this act, be and they are hereby repealed and made void.

Former laws repealed.

8. *And be it further enacted*, That the commissioners

Additional fees

to pilots of port
Beaufort.

of navigation for Port Beaufort, or a majority of them, do from time to time make to the bar and river pilots, such additional fees and allowances to those already established by law, as they may think just and reasonable, until the general assembly shall otherwise direct.

CHAP. 263.

An act to annex part of the county of Granville to Warren.

WHEREAS, the annexing a part of the county of Granville to Warren will tend greatly to the ease and convenience of those inhabiting the same :

Part of Granville
added to War-
ren.

1. *Be it therefore enacted*, That from and after the passing of this act, all that part of Granville county included within the following bounds, *viz.* beginning at the point where the line of division between Warren and Granville counties shall touch the line of division between this state and the state of Virginia, and running thence west along the said line to Nutbush creek, thence up said creek as it meanders to the mouth of Anderson's swamp, thence up the said swamp to the fork, thence up the south fork of the said swamp to Stark's mill, thence by a line to be run due south until it shall touch the aforesaid line of division between Warren and Granville, be, and the same is hereby annexed to, and shall be and remain a part of the county of Warren: *Provided*, Nothing in this act shall be understood to prevent the sheriff of the county of Granville from collecting all public taxes now due in that part of the county which comes within the description of this act.

Read three times and ratified in General Assembly, }
the 6th day of January, Anno Dom. 1787. }

SIGNED BY

JAMES COOR, S. S.

JOHN B. ASHE, S. C.

At a General Assembly, begun and held at Tarborough, on the eighteenth day of November, in the year of our Lord one thousand seven hundred and eighty-seven, and in the twelfth year of the independence of the said state: Being the first session of the said Assembly.

Richard Cas-
well, Esq. go-
vernor.

CHAP. 264.

An act declaring the treaty of peace between the United States of America and the King of Great Britain, to be part of the law of the land. [See the treaty, page 77.]

1. *Be it enacted, &c.* That the articles of the definitive treaty between the United States of America and the King of Great Britain, are hereby declared to be part of the law of the land. Treaty with G. Britain to be the law of the land.

2. *And be it further enacted,* That the courts of law and equity are hereby declared in all causes and questions cognizable by them respecting the said treaty to judge accordingly. Courts to judge accordingly.

CHAP. 265.

An act to regulate the inspection of Tobacco in this state.

WHEREAS by the laws now in force in this state for the inspection of Tobacco, frauds may be committed: For remedy whereof,

1. *Be it enacted, &c.* That from and after the passing of this act, the inspectors that are or shall hereafter be appointed to inspect tobacco at the several inspections within this state, shall and may take and receive for inspecting each hogshead of tobacco and issuing a note, the sum of four shillings; and for each hundred weight of transfer tobacco by them inspected, the sum of six pence, and so in proportion for a smaller quantity, and no more; and the turners up of tobacco as hereafter to be appointed, may take and receive the sum of three shillings for each hogshead he or they shall turn up and cooper, and no more. (a) Fees of inspectors, &c.

2. *And be it further enacted,* That any number of persons not exceeding ten, shall be appointed by the court of the county where such inspection may be, to turn up a [Altered by 1803, c. 642.] Appointment of persons to turn up.

and cooper tobacco, and they shall hold their appointment during good behaviour.

Inspectors to judge of their behaviour, &c.

3. *And be it also enacted*, That the inspectors at each and every inspection shall be a judge of the behaviour of the said turners up, and if they in their opinion find the said turner or turners up deficient in his or their duty, the said inspectors shall and they are hereby required to report the said turner or turners up so misbehaving, to the court of the county in which they are appointed; and if he or they shall be found guilty of the charge alleged by the said inspectors, in that case the court is hereby directed and required to remove such person or persons from the said appointment, and appoint another or others in his or their stead. *Provided*, That any person bringing tobacco to any of the said inspections, such person is hereby entitled either by himself or otherwise, to turn up, pick, prize and cooper his or their own tobacco, and to have free access to any of the prizes erected by the county where such inspection is, for the purpose of prizing the same: And if any dispute should arise between the parties bringing tobacco to any of the said warehouses, the right of preference to the said prizes shall be determined by the inspectors.

Inspectors not to take greater fees than this act allows.

4. *And be it further enacted*, That if any of the inspectors at the several inspections in this state, shall take and receive any greater fees than are by this act allowed, he or they so offending, shall upon conviction thereof, forfeit and pay the sum of five pounds for each and every offence, to be recovered before any jurisdiction having cognizance thereof, by any person suing for the same, to the use of the prosecutor.

Appointment of pickers, their duty, &c.

5. *And be it further enacted*, That the court of each county where a public inspection of tobacco is established, shall, at their first court after the passing of this act, appoint two persons skilled in tobacco to be pickers, who shall be entitled to the following fees for their services, *viz.* For each and every hundred weight of tobacco by them picked and prized, one fifteenth part; and shall take the following oath or affirmation:

I, A. B., do swear (or affirm as the case may be) that I will faithfully pick all tobacco which may be put into my possession for that purpose, without fraud or damage to the owner. So help me God.

And each of the said courts shall and may appoint one of the pickers to act in the room of either of the inspectors, at any time when such inspector may be incapable of attending, who shall take the oath in manner prescribed for inspectors, and such picker may be called on to give a casting voice should the inspectors disagree in the inspection of any tobacco; and the said picker when attending in lieu of either of the inspectors, may receive the allowance of the said inspector for each hogshead of tobacco he shall inspect: *Provided*, That the picker by whose voice any tobacco shall be condemned shall not be allowed to have the picking thereof, and that when the picker is so appointed by the court, he shall be invested with the power of inspector, in case of inability of either of the inspectors so appointed, until the next county court, or until the inspector can be present. *Provided nevertheless*, That upon complaint made to any of the said courts, against either of the said pickers, the court where such complaint is lodged shall and is hereby directed to enquire into the nature of the complaint, and if it shall appear that the picker or pickers, against whom such complaint hath been lodged, has been guilty of any misbehaviour in the execution of his duty, such court shall remove him or them from said appointment, and appoint another or others in his or their stead.

A picker appointed to inspect in certain cases.

Complaint against pickers, how heard.

6. *And be it further enacted*, That all laws heretofore made, that come within the purview and meaning of this act, are hereby declared to be made void.

Former laws repealed.

CHAP. 266.

An act for revising and collecting the acts of the General Assembly of the State of North-Carolina. [See 1791, c. 333.]

WHEREAS it is necessary that the acts of the general assembly now in force in this state be revised and collected:

1. *Be it enacted, &c.* That James Iredell be, and he is hereby appointed a commissioner to revise and compile the acts of the general assemblies of the late province and present state of North-Carolina, and to insert the charter from the crown of Great-Britain, the lords proprietors' great grant and the constitution of this state, together with the treaty of peace between Great-Britain and the United States of America, and the confederation of the

Commissioner appointed to revise the acts of assembly, &c.

United States existing at the time such revisal shall be published; and further the said commissioner is hereby authorised and directed in revising and collecting said acts, to leave out all laws repealed or obsolete, all private acts, and all acts on which no question of property can arise; and further the said commissioner is hereby required to see the said acts printed in the same order and in the same words in which they now stand, with marginal notes of the contents of each section, a marginal reference and a copious general index with reference to each act and the contents of each section.

To agree with a printer, &c.

2. *And be it further enacted*, That the said commissioner be and he is hereby authorised to agree and contract with a printer or printers to print and publish the said revisal, and furnish one copy to each county court within this state, two copies for the use of the general assembly, and one to each superior court, on account of the public; and such printer or printers shall be entitled to an exclusive right to print and sell the copies of such revisal for the space of seven years.

CHAP. 267.

An act to prevent thefts and robberies by slaves, free negroes and mulattoes.

WHEREAS it is represented that slaves and free negroes are encouraged to rob or steal from the inhabitants all kinds of produce, by the facility with which they may conceal and dispose of such produce to the masters of trading vessels in the several bays, harbours, creeks and rivers within this state:

No slaves, &c. to be permitted to be on board a vessel in the night, or on the Sabbath day without a pass, (See 1791, c. 335, s. 1.)

1. *Be it therefore enacted, &c.* That from and after the passing of this act, it shall not be permitted for the master or commander of any vessel to entertain any slave, negro or mulatto on board such vessel at any time between sun-set and sun-rise, nor during the sabbath-day, unless such slave, negro or mulatto as shall belong to the vessel, or shall have a pass from his, her or their master or mistress, or from some justice of the peace, expressing the time when and the business for which they go on board: and if any slave, negro or mulatto who has not such pass, or is not statedly employed on board the vessel as one of the hands, shall be found on board any vessel in any bay, harbour, creek or river within this

state, on the sabbath-day, or in the night between sun-set and sun-rise, he shall be presumed to have been disposing of stolen goods; and the master or commander of such vessel, on complaint and conviction before any two justices of the peace, shall be subject to a fine for entertainment of such slave, negro or mulatto, of five pounds for the first offence, and ten pounds for every succeeding offence, to be applied to the use of the poor of the county (a) in which such conviction shall be had: but any person dissatisfied with the judgment of the said two justices, shall have the right of appealing to the court of the county, the determination whereof shall be final; the person appealing to be subject to the same regulations as in the cases of other persons appealing from the judgment of a justice.

Penalty on master of the vessel.

a [See 1794, c. 406, s. 6.]

2. And whereas the property of many of the citizens of this state may be greatly affected by permitting a private intercourse between slaves and free negroes and mulattoes: *Be it enacted*, That if any free negro or mulatto shall entertain any slave in his or her house during the sabbath, or in the night between sun-set and sun-rise, he or she shall for entertaining such slave be subject to a fine of twenty shillings for the first offence, and forty shillings for every subsequent offence, to be recovered on conviction before any one justice of the peace, and applied to the use of the poor of the county (b) in which the offence shall be committed, saving to the party the same right of appealing as aforesaid. And in case the said free negro or mulatto shall not be able to pay the fine aforesaid, the constable who shall have attended at such conviction, shall hire out said free negro or mulatto to the person who shall take him or her for the shortest space of time in payment of the said fine with costs, the said constable having previously advertised at least ten days at the door of the court-house and other public places of the said county, that such negro or mulatto would be hired out for the purpose aforesaid; and the person who shall hire such free negro or mulatto, shall be bound to pay at the time and place of such hiring the amount of the fine with costs as aforesaid.

Penalty for free negroes, &c. entertaining slaves, &c.

b [Ibid.]

3. *And be it further enacted*, That in case any free negro or mulatto shall from and after the passing this act, intermarry or cohabit with any slave, without the consent of his or her master had in writing, and attested by two justices of the peace, such free negro or mulatto shall

Penalty for free negro, &c. marrying a slave, &c.

be liable and held to pay to the master or mistress of such slave the sum of ten pounds; and on failing to pay such sum, shall be held to service to the master or mistress of such slave for and during the term of one year.

CHAP. 268.

An act for fixing the final settlement of unliquidated claims against this state, and against the United States within this state.

Claims to be entered with the comptroller before paid.

1. *Be it enacted, &c.* That no claim, draft or warrant from the governor or any one else, except the certificates for the service of the members of the general assembly and their clerks and waiters, and the certificates of the clerks of the superior courts for the salaries of the judges and the attorney-general, shall be paid by the treasurer, collector or other receiver of the public revenue or taxes, until such claim, draft or warrant shall have been entered in the comptroller's office, and charged to the person or persons drawing the same, with the comptroller's order endorsed to the treasurer or other receiver of the public revenue to pay the same, and no claim, warrant or draft (except as before excepted) shall be allowed in the settlement of the account of any treasurer, collector or receiver of the public revenue or taxes, but under the foregoing rules and regulations; any law to the contrary notwithstanding.

(See 1792, c. 368, & 1793, c. 397.)

[The other provisions of this act have had their effect, and are no longer of any use.]

CHAP. 269.

An act for the more regular collecting and accounting for the revenue of this state, for allowing the public treasurer a clerk, and for the collection of arrearages, and to repeal the twelfth section of an act therein mentioned.

WHEREAS it is advisable that the public accounts of this state should in future be kept after a manner different from the mode heretofore pointed out by law :

1. *Be it therefore enacted, &c.* That for the year one thousand seven hundred and eighty-eight, and each succeeding year, all sheriffs (a) and other receivers of public monies, shall settle their respective accounts, or cause them to be settled with the comptroller of this state, the whole of which settlements, except those herein af-

Sheriffs, &c. to settle with the comptroller.
a [To give bond to account for county and poor taxes, 1798, c. 509, and see 1811, c. 923.]

ter excepted, shall be made in the months of July, August or September in each and every year ; and it shall be the duty of the comptroller on forming any such settlement, forthwith to report the sums or amount due from such accountant to the treasurer of the state, setting forth in such report (if a sheriff's account) the net amount of each species of public tax ; and the treasurer shall raise an account against each and every of such persons and debit them accordingly: and in case any such person shall fail to appear, fully pay up and finally settle for the sums so reported against him or them on or before the first day of October in each year, it shall then be the indispensable duty of the treasurer, and he is hereby required to take judgment without delay for the several sums or balances due the state agreeable to such reports, to which sum in case the delinquent be a sheriff shall be added his commissions, which shall be considered as absolutely forfeited to the state : and it is hereby declared that in all cases of the delinquency of sheriffs, clerks of courts, collectors of imposts, entry takers, registers, vendue masters, and others accountable for public monies, the comptroller's report shall be held and deemed sufficient testimony for the court and jury to found their verdict on.

Comptroller to report to the treasurer, &c.

Treasurer to take judgments against delinquents.

Sheriff's forfeit their commissions.

Comptroller's report evidence.

2. *And be it further enacted,* That it shall be the duty of each and every of the clerks of the county courts in this state, to make or cause to be made return of the taxable property of their counties respectively to the comptroller, on or before the first day of December in every year, in which return shall be expressed each particular species of taxable property in words written in full length.

Return of taxable property to be made the comptroller by clerks of county courts, &c.

3. *And be it also enacted,* That it shall further be the duty of the clerks at the time of making such returns and settlements, to furnish the comptroller with a certificate of the name of the sheriff of his county and his securities, the name of the entry-taker and his securities, the name of the register and his securities ; which certificates when certified by the comptroller to be agreeable to the originals, (a) shall on motion of the treasurer for judgment against any such persons be deemed equally valid in law with the bond of such clerk, sheriff, entry-taker or register, and the court shall give judgment and award execution thereon accordingly.

Names of certain officers and their securities to be returned by the clerks.

Judgment on comptroller's certificate.
a [See 1784, c. 219, s. 6.]

4. *And be it further enacted,* That in case any of the clerks of the courts of this state shall fail or neglect to do

Penalty on clerks for neglect, &c.

Judgment on
comptroller's
certificate of
such failure.

Duty of clerks
of the superior
courts.

Tax on suits
how recovered
and accounted
for.

a [See 1809, c.
769.]

Comptroller to
open an account
with the trea-
surer.

b [See 1792, c.
368, s. 4, and
1793, c. 397.]

The treasurer
to be allowed a
clerk with a sa-
lary of 150*l*.

and perform any of the duties hereby enjoined them, he or they so failing or neglecting, shall forfeit and pay one hundred pounds current money to the use of the state ; and it shall be the duty of the comptroller to certify every such failure to the treasurer, who shall on motion in any court of record in this state be entitled to a judgment for the above mentioned penalty with costs ; which judgment shall be founded on such certificate or report, and it is hereby expressly declared to be the treasurer's duty to have the same entered up accordingly.

5. *And it is also further enacted.* That the clerks of the several superior courts in this state shall be subject to and bound by this act in every respect so far as the same will apply to them, and in case of neglect of duty shall be subject to the like penalty as other clerks of courts ; and all taxes on suits both in the superior and county courts, shall be recovered, levied and accounted for agreeable to an act passed at Newbern, in the year one thousand seven hundred and eighty-four, entitled an act for raising a public revenue for the support of government, and to repeal an act, entitled an act to suppress excessive gaming ; (a) and all clerks shall make their returns and account for the monies in their hands agreeable to the said act, where it shall not be otherwise provided for by this act ; and every entry-taker, register or vendue-master, failing to settle his accounts agreeable to the true intent and meaning of this act, shall also forfeit the sum of one hundred pounds, to be recovered in like manner as aforesaid.

6. *And be it further enacted,* That it shall be the duty of the comptroller to raise an account against and debit the public treasurer with the net amount of each account so by him to be settled and reported as aforesaid, and in the same to credit him by and agreeable to such settlements as he shall hereafter make ; and the said comptroller is hereby directed to balance and finally do away such accounts as he may already have raised against the public treasurer since the first day of January last. (b)

7. And whereas the many duties enjoined the public treasurer renders it absolutely necessary that he should be furnished with a clerk : *Be it further enacted,* That for the year one thousand seven hundred and eighty-eight, and each succeeding year, the treasurer of this state be allowed one clerk, whose salary shall be one hundred and fifty pounds, to be paid him out of the public treasury in

half-yearly payments on warrants to be drawn by the governor.

8. *And be it further enacted*, That all acts and clauses of acts directing the duty of clerks in making returns and settlements, which come within the purview hereof, shall be and the same are hereby repealed and made void. Former acts &c.
repealed.

CHAP. 270.

An act authorising and requiring the sheriffs of the several counties in this state to bring suit, take into possession, receive and make sale of all property left by the British in this state during the late war.

WIIEREAS it is represented to this general assembly that negroes, horses and other property have been left in different parts of this state by the British army :

1. *Be it therefore enacted*, &c. That the sheriffs of the several counties in this state be and they are hereby authorised and required to demand, ask for and receive into their possession, all negroes, horses, waggons and other property of every nature and kind, which may have been left in their respective counties by the British army, during the late war ; and the said sheriffs shall have the same power to prosecute a suit or suits as the commissioners of confiscated property have under an act, entitled, an act directing the sale of confiscated property, (a) and shall make sale of the said property in the same manner in their respective counties, and under the same regulations and restrictions as to making sale and accounting for the proceeds, returning one descriptive list of such property to the comptroller's office, attested by the court of the county, with an account of sales, a copy of which shall be recorded in the county court office, and entered at large on the minutes of said court.

Sheriffs to recover and receive said property and sell the same.

a [1784, c. 222.]
(Obsolete.)

2. And whereas the property before mentioned liable to be sold for the use of the state, may be the property of citizens of the United States : *Be it therefore enacted*, That any property so left and recovered or received by the sheriff, shall be sold for current money, at twelve months credit, taking bond and sufficient security for the payment.

The property how to be sold.
(Obsolete.)

3. *And be it further enacted*, That if any citizen of the United States claiming any of the property, shall hereafter make it appear to the satisfaction of the general assembly that they were legally entitled to any of the

Satisfaction to citizens of the United States, if injured.
(Obsolete.)

said property, they shall receive the sum such property sold for, with lawful interest thereon from the time such money was paid into the treasury.

CHAP. 271.

An act to repeal the fourth section of an act passed at Newbern, in the year one thousand seven hundred and eighty-four, entitled, an act to amend and supply the deficiencies of an act passed last assembly at Hillsborough, entitled, an act to regulate the descent of real estates, to do away entails, to make provision for widows, and to prevent frauds in the execution of last wills and testaments, and for directing how deeds of gifts and bills of sales of slaves shall be executed, authenticated and perpetuated. (a)

a [1784, c. 225.]

WHEREAS the operation of the fourth clause or section of the above mentioned act in a great measure deprives the widows of persons dying intestate, of the just and reasonable proportion and share of the personal estate of their deceased husband, (b) as provided for them and expressed in an act of the general assembly of this state passed at Hillsborough, in the year one thousand seven hundred and eighty-four, entitled, an act to regulate the descent of real estates, to do away entails, to make provision for widows, and to prevent frauds in the execution of last wills and testaments :

b [Giving then only a life estate in slaves.]

Section of an act repealed.

1. *Be it therefore enacted, &c.* That from and after the passing of this act, the aforesaid fourth section or clause of the first recited act passed at Newbern, in the year one thousand seven hundred and eighty-four, shall be, and is hereby declared to be and remain null and void, to all intents and purposes, as if the same had never been made.

CHAP. 272.

(See 1796, c. 454.)

An act to enable the county courts to appoint commissioners to keep open rivers and creeks at their several falls, so far as they think necessary for the passage of fish up the same.

WHEREAS it is necessary for the general good of the citizens of this state that the several rivers and water-courses within the same should be kept so far open as to allow a free passage for fish up the same :

Commissioners to lay off rivers, &c. for the passage of fish.

1. *Be it therefore enacted, &c.* That the county courts of pleas and quarter-sessions shall be and they are hereby empowered to appoint commissioners to examine and

lay off the rivers in their county, and where the river is a boundary between two counties, to lay off the river on the side of the county appointing such commissioner; and further such commissioner shall in laying off the rivers, allow three fourths of such rivers for the owner or owners of the same, for the purpose of erecting stops, dams and stands, and one fourth part, including the deepest water of the river and creeks, they shall leave open for the passage of fish, marking and designating the same in the best manner they can; and where any mill or mills are built across any such river or rivers, and slopes are or may be necessary, commissioners shall be appointed as above, who shall lay off such slope or slopes and determine the length of time such shall be kept open; and such commissioners shall and they are hereby required to return to their respective county courts a plan of such falls, dams and other parts of rivers as may have been thought necessary to survey as above.

2. *And be it further enacted,* That all and every person or persons who shall hereafter erect any stand, dam, wear or hedge, in such part of the river as by this law is required to be left open for the passage of fish, or who shall not make and keep open any such slope as the commissioners may judge necessary, shall forfeit and pay five pounds for every twenty-four hours any person shall keep up, erect or make any such stop, dam, stand, wear or hedge, or dam up or stop any such slope, to be recovered by any person suing for the same, one half to his own use, the other half to be applied to the use of the county, either by warrant before a justice of peace, or in a court of law, as the case may require.

Penalty for erecting dam, &c.

CHAP. 273.

An act for the accommodation of post-riders, and to amend an act, entitled, An act to empower the county courts of pleas and quarter-sessions of the several counties in this state to order the laying out public roads, and to establish and settle ferries, and to appoint where bridges shall be built, and to clear inland rivers and creeks, passed at Newbern the twenty-second day of October, one thousand seven hundred and eighty-four. (See 1784, c. 227, s. 15.)

WHEREAS it is represented that persons who contract for riding post or carrying the public mail, are subject to great delays by detention at ferries, or to very grievous exactions, to the injury of the public:

Privilege to
mail carriers.

Proviso.

1. *Be it therefore enacted, &c.* That such person or persons as may contract for riding post, or for carrying the mail in stages, shall be authorised to keep a boat and to employ hands for the sole purpose of transporting the public mail, and such passengers as may travel in the stage with the same, across any ferry or ferries, without let or hindrance; any law to the contrary notwithstanding. *Provided nevertheless,* That nothing contained in this act shall be so construed as to authorise the contractors for riding post, or for carrying the mail by stage, to transport any other passengers across at public ferries than such as travel by the stage, and that no person or persons shall pretend to transport any other passenger for pay at a public ferry, unless he or they are duly authorised so to do by the court of the county in which the ferry may be, or of the county from which the passenger may be carried, under the penalty of five pounds for every offence, to be recovered before any justice of the peace, to the use of the person who may sue for the same, subject nevertheless to an appeal by the party grieved to the county court.

CHAP. 274.

An act authorising and empowering the county courts of pleas and quarter-sessions to divide and appropriate the real estate of intestates.

Estates of intestates how to be divided.

a [Or other tenants in common by 1789, c. 309]
Proviso, where the real estate lies in different counties, or in one only.

b [See 1795, c. 447.]

1. *Be it enacted, &c.* That the judges of the superior court of law and equity, and the justices of the county courts of pleas and quarter-sessions, be and they are hereby required and empowered, on petition of one or more persons claiming the real estate of any intestate, (*a*) to appoint five commissioners to divide and appropriate the same, or so much thereof as shall be prayed for, and the court shall judge proper and requisite according to law: *Provided,* That in all cases where the real estate lies in different counties within this state, such petition shall be exhibited in the superior court of the district where such real estate or part of it lies, and where the estate lies in one county only, the petition for a division shall be to the court of such county, and no otherways; and further said commissioners or a majority of them, being first sworn to do justice among the claimants according to the best of their skill and abilities, (*b*) are hereby empowered to charge the more valuable dividend

or dividends with such sum or sums as they shall judge necessary to be paid to the dividend or dividends of inferior value, in order to make an equitable division; (a) which sum or sums so charged shall be paid to the owner or owners of the dividend or dividends of inferior value, by or to the guardian or guardians, for and on account of the minors, within one year after the commissioners shall have made a return of their proceedings. And further the said commissioners or a majority of them are hereby required, as soon as they can, to make a return of their proceedings and appropriations, under their hands and seals, ascertaining with precision the different tracts or parcels of lands, lots or houses, with actual surveys of the same when necessary, to the court by which they were appointed (b) which return and appropriation shall be certified by the clerk and enrolled in his office, and registered in the office where such lands, lots or houses respectively lie, and such return and appropriation shall be binding and valid in, among and between the claimants, their heirs and assigns forever.

2. *And be it enacted*, That the said commissioners for their trouble and services, may take and demand whatever the court by which they may be appointed shall judge adequate to the trouble they may have been at, and for the expenses incurred either to surveyors or otherwise, the said expenses to be paid in equal proportions by the claimants: And further, if said charges are not paid on return of their proceedings and services, execution shall and may issue against the petitioner or petitioners in the same manner as for the attendance of witnesses.

a [See 1801, c. 588.]

Commissioners appointed to divide, to make a return to the court, &c.

b [When one party absent from the state, how to proceed, see 1803, c. 636.]

c Their allowance. (Wherein a court of equity may decree a sale, see 1812, c. 847—1818, c. 982—1819, c. 1022.)

CHAP. 275.

An act to empower the county courts to proceed in certain cases as therein directed.

WHEREAS in the course of the late war many accidents have happened by fire or otherwise, whereby the books of accounts, bonds and other writings and papers of persons deceased have been destroyed, and the proofs of many debts, dues and demands due and owing to the said deceased persons, have been thereby rendered impossible, and by means of the said accidents no recovery of the said debts, dues and demands can be had in the ordinary course of law, and many orphans are likely to be greatly injured:

Mode of relief where papers of a deceased person are destroyed.

§ [Chapter 5.]

Restriction.

1. *Be it therefore enacted, &c.* That in all such cases, where the papers of any deceased person have been or shall hereafter be so destroyed by accident, due proof being thereof made to the court of the county and entered on record by the direction of the court, it shall and may be lawful for the executors or administrators of such person to prefer a petition for the recovery of any debt or demand due and owing from any person whatsoever, to the court of the county where the debtor resides, in the manner and under the regulations prescribed by an act for the better care of orphans, and security and management of their estates, passed in the year one thousand seven hundred and sixty-two, (a) therein setting forth the said debt and the amount thereof as nearly as may be, and the supposed origin thereof; and such petition being filed in the clerk's office, the same proceedings shall be had therein, and the defendant shall be bound and subject to the same rules, as in the twenty-third section of the said act and the last clause thereof is directed, as fully to all intents as if the said clauses and every sentence thereof were herein particularly set down and expressed.

2. *And be it further enacted,* That this act shall in no case be allowed to take place but only where papers have been accidentally destroyed; nor where it shall appear to the court on trial there was used any kind of fraud to obtain the benefit of this act; in which last case the suit shall be dismissed with cost.

CHAP. 276.

(See 1789, c. 314.)

An act directing the clerks of the several courts of record within this state as to their duty in office with respect to issuing writs.

WHEREAS transient persons and others, having no property either real or personal in this state, obtain writs and enter into litigious law suits where they have no allegations sufficient to support a suit, or property to disburse the charges thereof in case of failure, much to the injury of the good citizens thereof: For remedy whereof,

Manner of issuing writs.

1. *Be it enacted, &c.* That from and after the first day of July next, no writ or other leading process returnable to any of the courts of record within this state, shall be granted or issued by the clerk or his assistant in office, but under the following regulations and restrictions, *to wit,* That

the clerk either by himself or his deputy, before issuing any writ or other leading process, take sufficient security of the person so applying, conditioned that they will prosecute such suit or suits they may so commence, and in case of failure of such prosecution pay to the defendant all such costs and damages as may be awarded against him by the court having cognizance thereof. (a)

a [Plaintiff in ejectment to give bond at the return court, see 1804, c. 658.]

2. *And be it further enacted*, That when any clerk, either by himself or his deputy in office, shall issue any writ or other process, he shall enter the same into a book by him to be kept for that purpose, together with the names of the plaintiff and the defendant, the place of their abode, the name of the security or securities for obtaining such writ, and the place where they live, and have the same before the judges of the court where he may so officiate as clerk, subject to the examination of such court.

To be entered in a book, &c.

3. *And be it further enacted*, That if any clerk, either by himself or his assistant in office, shall issue any writ or other leading process otherwise than by this act directed, he shall pay to the defendant the sum of one hundred pounds, to be recovered by action of debt in the court where such offence shall have been so committed; and also shall forfeit and pay the sum of fifty pounds for every offence so committed by such clerk or his assistant in office, recoverable in any court of record having cognizance thereof, one half to the use of the person suing for the same, the other half to the use of the poor of the county.

Penalty on clerks for non-compliance.

4. *And be it further enacted*, That it shall and may be lawful for the clerk of such court, to tax in the bill of costs the sum of two shillings for every security by him so taken, and also the sum of two shillings for entering the same, together with the names of the security, in the book to be by him kept for that purpose; any law, usage or custom to the contrary notwithstanding.

Costs to be taxed.

CHAP. 277.

An act to compel the attendance of all such persons as are or shall be elected to represent any county or town in the general assembly of this state, at such time and place as may be appointed.

WHEREAS the want of the due and punctual attendance of persons elected as members of the general assembly at the time and place appointed for holding their

sessions, hath been found prejudicial to individuals, and highly injurious to the public :

Members of assembly to meet on the first day appointed.
c [Raleigh the place, see 1792, c. 367, s. 4.]

1. *Be it enacted, &c.* That from and after the first day of April next, every person who shall be elected to represent any county or town in this state in the general assembly thereof, shall meet at such time and place (*a*) as may be appointed for the meeting of the general assembly by adjournment or otherwise, on the first day appointed for that purpose, and attend to the public business as occasion may require.

Penalty for not attending duly.

2. *And be it further enacted,* That in case any person who shall be hereafter elected to represent any county or town in the general assembly of this state, shall fail, refuse, neglect or delay to attend to the duties of his appointment, agreeable to the directions of this act, every such person shall forfeit and pay for not appearing as aforesaid, the sum of five pounds current money of this state, and the sum of twenty shillings like money for each and every day he may be absent from his duty during the sessions ; which sum or sums of money shall be deducted or taken from his pay or allowance as a member, if the same shall be sufficient ; and should the fine or forfeiture exceed the pay or allowance of such member or person elected as aforesaid, then and in that case such excess so remaining due, shall be taken out and deducted from any future allowance which may be made to such person as a member by the general assembly of this state.

Proviso.

Provided nevertheless, That a majority of the members of either house of the general assembly may and shall have power to remit to any person having incurred the same, the fines and forfeitures aforesaid, or any part thereof, where it shall appear to their satisfaction on oath or affirmation, that the person hath been prevented from attending his duty by sickness, unavoidable hindrance, or other sufficient cause ; any thing heretofore in this act mentioned to the contrary notwithstanding.

Privilege of the members.

3. *And be it further enacted,* That the members of the general assembly shall have freedom of speech and debate in general assembly, and not be liable to impeachment or question in any court or place out of the general assembly for words therein spoken ; and the members are hereby declared protected from all arrest and imprisonment, or attachment of property, during the time of their going to, coming from or attending the general assembly, agreeable to the certificate of his attendance, except for felony, treason or breach of peace.

4. *And be it further enacted*, That the sheriff of every county in this state shall make return to the general assembly, at their first annual meeting, of the persons elected in his county to represent the inhabitants in either house of the legislature, and shall therein certify whether the persons so returned were chosen by their own consents, and which of them was so chosen ; and if any person so returned shall fail to attend at any session of the general assembly which he ought to attend, then such person shall forfeit and pay the sum of twenty-five pounds, to be recovered in the court of pleas and quarter sessions of the county for which such person was elected, at the suit of the governor for the time being, on the certificate of such failure issued by the speaker of the house in which such delinquency happened, unless sufficient excuse for such failure be offered and proved on oath by such delinquent member at the next succeeding assembly.

Sheriff's duty in making a return.

Penalty for a member chosen with his own consent not attending.

CHAP. 278.

An act for making process in equity effectual against persons who abscond, and who reside without the limits of the state, and for better regulating the proceedings in courts of equity.

(See 1782, c. 177, and the acts there referred to.)

WHEREAS persons have sometimes withdrawn themselves beyond the limits of the state, or otherwise absconded, to avoid appearing in courts of equity ; and whereas also, no means have been provided to cite persons residing without the limits of the state to appear in the said courts : For remedy of the inconvenience thence arising,

1. *Be it enacted, &c.* That if any suit which hath been or hereafter shall be commenced in any court of equity, any defendant or defendants against whom any *subpoena* or other process shall issue, shall not cause his, her or their appearance to be entered on such process within such time, and in such manner, as according to the rules of the court the same ought to have been entered in case such process had been duly served, and an affidavit or affidavits shall be made to the satisfaction of such court, that such defendant or defendants resides or reside beyond the limits of the state, or that upon enquiry at his, her or their usual place of abode, he, she or they could not be found, so as to be served with such process, and that there is just ground to believe that such defendant or defendants is or are gone without the limits of the state, or

Proceedings in court of equity when defendant resides out of the state, or has absconded, &c.

otherwise abscond to avoid being served with the process of such court, then and in such cases, the court out of which such process issued may make an order, directing and appointing such defendant or defendants to appear at a certain day therein to be named; and in cases where such defendant or defendants resides or reside without the limits of the state, a copy of such order shall within sixty days after such order made, be inserted in some gazette regularly published within the state, for such length of time as the court shall order and direct, and may when they shall think necessary, direct such order to be inserted in any gazette in the United States; and in cases where such defendant or defendants shall have withdrawn him, her or themselves beyond the limits of the state, or otherwise absconded to avoid the service of such process, a copy of such order shall within sixty days after such order made, be inserted in some gazette regularly published within this state, if any there be, for such length of time as the court shall direct, and shall within the time aforesaid, be posted up at the door of the court-house where such order shall be made, and also in some public place within the county where such defendant or defendants respectively made his, her or their usual abode within thirty days next before such his, her or their absenting; and if the defendant or defendants do not appear within the time limited by such order, or within such further time as the court shall appoint, then, on proof made of such publication of such order as aforesaid, the court being satisfied of the truth thereof, may order the plaintiff's bill to be taken *pro confesso*, and make decree thereupon as shall be thought just; and may thereupon issue process as in other cases to compel the performance of the decree, either by execution as hereinafter provided to satisfy the demands of the plaintiff or plaintiffs in the said suit, or by causing the possession of the estate and effects demanded by the bill to be delivered to the plaintiff or plaintiffs, or otherwise, as the nature of the case shall require. First, *Provided nevertheless*, That such plaintiff or plaintiffs shall first give sufficient security, in such sum as the court shall think proper, to abide such order touching the restitution of such estate or effects as the court shall think proper to make concerning the same, upon the defendant or defendants appearing and petitioning to have the said cause reheard, and paying such costs to the plaintiff or plaintiffs as the court shall order. Se-

Plaintiff must
give security.

condly, *Provided*, That if any decree shall be made in pursuance of this act, against any person or persons residing without the limits of the state at the time such decree is pronounced, and such person or persons shall within two years after the making such decree reside within the state, or become publicly visible therein, then and in such case he, she or they shall likewise be served with a copy of such decree within a reasonable time after his, her or their coming into the state, or their public appearance shall be known to the plaintiff or plaintiffs; and in case any defendant or defendants, against whom such decree shall be made, shall within two years after the making of such decree, happen to die before his or her coming into the state, or appearing openly as aforesaid, or shall within the time last before mentioned die in custody, before his or her being served with a copy of such decree, then his or her heir of such defendant shall have any real estate whereof possession shall have been delivered to the plaintiff or plaintiffs, if such heir may be found, or if such heir shall be a feme covert, infant or *non compos mentis*, the husband, guardian or committee of guardians of such heir respectively, or if the personal estate of such defendant shall have been levied upon or possession thereof delivered to the plaintiff or plaintiffs, then his or her executor or administrator, if any such there may be, may and shall be served with a copy of such decree within a reasonable time after it shall be known to the plaintiff or plaintiffs that the defendant is dead, and who is his or her heir, executor or administrator, and where he, she or they may respectively be served therewith within the state. Thirdly, *Provided always*, If any person or persons so served with a copy of such decree, shall not within twelve months after such service appear and petition to have the said cause reheard, such decree so made as aforesaid, shall stand absolutely confirmed against the person or persons so served with a copy thereof, his, her or their respective heirs, executors and administrators, and all persons claiming or to claim by, from or under him, her or them, or any of them, by virtue of any act done or to be done subsequent to the commencement of such suit. Fourthly, *Provided nevertheless*, That if any person so served with a copy of such decree, shall within twelve months after such service, or if any person not being so served, shall within three years next after the making such decree, appear in court and petition to be

Proviso, where a non-resident defendant, against whom a decree is obtained, afterwards returns, &c.

When such decree may be absolutely confirmed against such defendant not applying for a re-hearing.

Re-hearing on application in a limited time.

heard with respect to the matter of such decree, and shall pay down, or give security for payment of such costs as the court shall think reasonable in that behalf, the person or persons so petitioning, his, her or their respective representatives, or any person claiming under him, her or them respectively; by virtue of any act done before the commencement of the suit, may be admitted to answer the bill exhibited, and issue may be joined, and witnesses on both sides examined, and such other proceedings, decree and execution may be had thereon, as there might have been in case the same party had originally appeared, and the proceedings had then been newly begun, or as if no former decree or proceedings had been in the same cause. Fifthly, *Provided nevertheless, And be it enacted*, That if any person or persons against whom such decree shall be made, his, her or their heirs, executors or administrators, shall not within three years next after the making of such decree, appear and petition to have the cause reheard, and pay down, or give security for payment of such costs as the court shall think reasonable in that behalf, such decree made as aforesaid shall stand absolutely confirmed against the person and persons against whom such decree shall be made, his, her or their heirs, executors and administrators, and against all persons claiming or to claim by, from or under him, her, them or any of them, by virtue of any act done or to be done subsequent to the commencement of such suit; and at the end of such three years, it shall and may be lawful for the court to make such further order as shall be just and reasonable according to the circumstance of the case. Sixthly, *Provided always*, That this act shall not extend, or be construed to extend to warrant or make good any proceedings against any person residing without the state, unless the ground or cause of action, or the transaction on which the bill may be brought, took place within the limits of the state.

When to be absolutely confirmed, &c.

Not to affect persons living out of the state, unless the cause of action arose in it.

What executions to issue on decrees in equity.

2. WHEREAS the present mode of proceeding to carry into effect the decrees of the court of equity by attachment, *habeas corpus*, attachment with proclamation and commissions of rebellion, are in many cases dilatory, oppressive and inadequate: *Be it enacted*, That in all cases where decrees may have been made in any suit in equity in any of the courts in this state, or shall hereafter be made for any sum or sums of money, it shall and may be lawful for execution to issue thereon against the defendant's body, or against his goods and chattels, lands

and tenements, to satisfy such decree (and lands and tenements, goods and chattels, shall be found by such decree and execution in the same manner as lands and tenements, goods and chattels, are by judgments and executions in law) and costs, in the same manner as execution may or shall issue in the courts of law.

3. WHEREAS the drawing and enrolling of decrees, rules and orders in equity, require considerable skill, experience and attention; and whereas the present mode of adjusting and stating accounts by auditors or commissioners, has been found productive of great delay and difficulty: *Be it enacted*, That the judges of the said court of equity shall appoint some person of skill and probity, to act as clerk and master in equity to each of the said courts; (a) who shall give security in the same manner, and take the same oath before the judges, as the clerks on the law side of the court, and shall hold his office during good behaviour; and the said clerk shall keep a fair and distinct record of the proceedings of the court of equity to which he may be appointed; and the bills, answers and decrees shall be regularly enrolled in a well bound book kept for that purpose; and shall be entitled to the following fees and no other:—For a report on an answer, three shillings; on a plea and answer, four shillings; on a demurrer and answer, four shillings; for an affidavit to an answer, one shilling and six pence; for an affidavit to a bill, one shilling and six pence; for a separate affidavit, two shillings; for a copy report by the office, copy sheet, two shillings; for a report stating an account, one *per cent.* on the amount of each account exhibited, where the account is made five hundred pounds, and a half *per cent.* for all sums over five hundred pounds; (b) for copies of proceedings and exemplifications, copy sheet, two shillings; for taking a bond, one shilling and six pence; for every rule given for service, two shillings and six pence; for every rule not for service, one shilling and three pence; for every *subpoena*, writ or other process, ten shillings; for every *dedimus* or commission, five shillings and four pence; for every injunction, ten shillings; for drawing decrees, four shillings by the copy sheet; for enrolling a bill or answer, two shillings by the copy sheet; for entering a plea or demurrer, two shillings; for recording depositions to perpetuate testimony, by the copy sheet, two shillings; for every search, one shilling; for every dismissal, two shillings. (c) And further, the said

Clerk and master in equity to be appointed.

His duty, fees, &c.

a [In each county, by 1806, c. 693, s. 10.]

b [This allowance repealed and limited to 25l. by 1793, c. 389, s. 7.]

c [For affixing the seal to any writing requiring it, 2s. 6d. by resolution of 1792. For taking security on leading process, 2s. and recording such bond 2s. see 1793, c. 388, s. 2, and the list of fees subjoined to act of 1793, c. 403.]

master in equity is hereby fully empowered and authorised to administer the oath or affirmation to all and every person and persons, either witnesses or others having business in the court of equity, at all times, in the same manner as masters in chancery do in like cases in Great-Britain.

Superior courts to bear distinct names, as to their law and equity business.

4. And to prevent confusion in construing acts relative to the proceedings in said courts: *Be it enacted*, That from and after the expiration of the present session of the general assembly, such courts in all equity proceedings shall be styled and called the court of equity for its respective district, and in all law proceedings, the superior court of law for its respective district as formerly.

CHAP. 279.

An act to amend the several acts of Assembly heretofore passed for giving further time to surveyors within the different counties to make their surveys, and return plats thereof to the secretary's office, and for giving a further time for the registration of certain deeds issued from lord Granville's office, and marriage contracts therein mentioned.

WHEREAS by misconstruction of the several laws respecting entering and surveying lands in this state, impositions have been attempted on the original enterer of the said lands: For remedy whereof,

Surveyors to survey according to priority of entries.

1. *Be it enacted, &c.* That the surveyors in the several counties in this state shall survey all entries of land according to the priority of such entry, paying due respect to the number of each warrant, and every grant hereafter to be obtained by any subsequent entry or entries, otherwise than is by this act directed, shall be and the same is hereby declared void and of no effect; any law or custom to the contrary notwithstanding. *Provided nevertheless*, That nothing herein contained shall be construed to prevent any person making a subsequent entry on any land, from surveying and obtaining a grant as the law directs, for all such surplus land as shall remain after the enterer or enterers of such land hath surveyed his, her or their entry or entries as aforesaid.

Proviso for entry of surplus land.

Further time allowed for registering deeds issued from Lord Granville's office (Time enlarg-

2. *And be it further enacted*, That all deeds issued from the office of the late earl of Granville, and not already registered, may have a further time of twelve months allowed for registration, and the proof necessary thereto shall be by parity of hands: *Provided*, That the lands

held under such deeds shall have been actually occupied by the original grantee, or some person under him, for the space of seven years, and taxes paid thereon for the said time, and that the said lands have not been entered in the land-office under the present government by any person or persons whatsoever; and all deeds under the description and conditions aforesaid proved and registered, shall be good and valid in law, and shall enure and take effect as fully and effectually to the use and behoof of the grantees, their heirs and assigns, and those claiming under them, as if such deeds had been proved and registered agreeable to the directions of any act of assembly heretofore made. *See 1788, c. 291, s. 3—1790, c. 328—1795, c. 438—1800, c. 553—1804, c. 671—1809, c. 784—1813, c. 860—1816, c. 908—1818, c. 967.)*

3. *And be it enacted*, That all marriage contracts made and entered into before the passing of the act, entitled, an act directing the marriage settlements and other marriage contracts shall be registered, and for preventing injury to creditors, shall be allowed a further time of twelve months for registration, and if duly proved and registered within that time, shall be as good and valid in law, to all intents whatsoever, as if the same had been proved and registered within the time thereby limited and directed. *Further time allowed for registering marriage contracts. (See 1785, c. 258 s. 1—1791, c. 348, s. 2.)*

CHAP. 280.

An act to charge the estate of Honore Geroud, late of the town of Halifax, deceased, with the payment of all his just debts, and to prefer the same to the title acquired by this state in the property which was of the said Geroud in consequence of his self-murder. *First section private.*

And whereas such forfeitures can answer no valuable purpose, and may distress creditors, innocent relations and orphans: *Be it enacted*, That in all cases of suicide or self-murder hereafter happening, administration may be applied for and granted as in the cases of natural and ordinary death, and debts shall be paid and distribution made agreeable to the laws that are or may be made and provided for the management and distribution of the estates of persons dying intestate; and no forfeiture shall be hereafter incurred by suicide or self-murder; any law, usage or custom to the contrary notwithstanding. *Forfeitures in cases of suicide, done away.*

CHAP. 281.

Repealed by
1806, c. 693.

An act to erect the counties of Richmond, Cumberland, Sampson, Moore and Robeson into one district, and appointing a superior court of law and equity to be held for the said counties, at Fayetteville.

WHEREAS it hath been made appear to this general assembly, that the county of Richmond, of Salisbury district, Cumberland, Sampson, Moore and Robeson, of the district of Wilmington, by remaining annexed to those districts respectively, subject the inhabitants of the same to much inconvenience, by reason of their extreme distance from the superior courts of law and equity of the several districts to which they have respectively belonged; and as it may tend to a more equitable and speedy distribution of justice to the citizens in the counties aforesaid, to be erected into a separate district, to be held at Fayetteville, to which place they are more conveniently situated:

New district erected by the name of Fayetteville.

1. *Be it therefore enacted, &c.* That the counties of Richmond, Cumberland, Sampson, Moore and Robeson, from and after passing this act, shall be and they are hereby declared to be a separate district, by the name of Fayetteville; and the superior courts of law and equity for the said district shall be held twice in every year, at the court-house in Fayetteville, the first sitting whereof shall commence on the twentieth day of June, in the year one thousand seven hundred and eighty-eight, and the second sitting shall commence on the twentieth day of December, in the same year, and be so continued by adjournment; and the said court is hereby declared to be vested with the same powers, privileges and authorities, and entitled to the same emoluments, as the other district courts of law and equity within this state.

Read three times, and ratified in General Assembly, }
the twenty-second day of December, 1787. }

SIGNED BY

ALEX. MARTIN, S. S.

JOHN SITGREAVES, S. C.

At a general assembly begun and held at Fayetteville, on the third day of November, in the year of our Lord one thousand seven hundred and eighty-eight, and in the thirteenth year of the independence of the said state: Being the first session of the said assembly.

Samuel Johnston, Esq. governor.

CHAP. 282.

An act for levying a tax for the support of government, and for the redemption of the old paper currency, continental money and specie and other certificates, and for sinking the state currency.

This act, except the last section, is superseded by subsequent provisions.

And be it enacted, That if any justice of the peace shall receive any person's list of taxable property without taking such person's oath or affirmation, as the case may be, thereto, the justice or justices so misbehaving, shall be deemed guilty of a misdemeanor, and upon conviction in any court having cognizance of the same, shall be thenceforth suspended from the exercise of his office.

Penalty on justices for taking lists of taxables not on oath.

CHAP. 283.

An act to confirm the rights and titles of several citizens of this state in certain negroes therein described, and preventing unjust and vexatious law-suits.

WHEREAS in the year one thousand seven hundred and eighty-one, sundry of the citizens of this state did enlist in the service of the state of South-Carolina, in the brigade commonly called the State troops, commanded by brigadier-general Sumpter, and several of them agreeable to their enlistment and service did draw negroes, one for each private soldier, and officers in proportion to their rank, which negroes were at that time taken from the disaffected citizens of said state by order of general Sumpter, for that purpose; and the general assembly of the state of South-Carolina did since, to wit, on the twenty-first day of March, one thousand seven hundred and eighty-four, pass an ordinance to indemnify brigadier-general Sumpter, and the officers acting under his command during the British invasion, in the second section of which ordinance it is ordained, that in all cases where any property hath been taken from any per-

son resident in said state, and appropriated to the public use by order of the said brigadier-general Thomas Sumpter, such person or persons shall apply for redress to the legislature, and not elsewhere; yet the disaffected citizens of that state, from whom those negroes were taken, have since instituted sundry suits against the citizens aforesaid of this state, for the recovery of said negroes. For remedy whereof,

Negroes secured to those who received them for services in Gen. Sumpter's brigade, &c. (Obsolete.)

Proviso, for citizens of other states.

1. *Be it enacted, &c.* That where any citizen of this state shall have actually served in the aforesaid brigade, and drawn a negro or negroes for said service, if there is or hereafter shall be any suit or suits for said negroes commenced against them, or any of them, or any person or persons claiming by, from or under them, or any of them, on the fact being proved to the satisfaction of the court and jury trying the cause, that such negro or negroes were regularly drawn in consequence of said service, a verdict and judgment shall be given for the defendants; any law, usage or custom to the contrary notwithstanding. *Provided nevertheless,* That nothing herein contained shall be construed to vest the property of any negro or negroes, taken by any person or persons of the aforesaid brigade, and not specially delivered to the said troops for their pay in the manner aforesaid for said service. *And provided also,* That nothing herein contained shall preclude citizens of other states, except those of South-Carolina, from recovering their negroes, if any may have been taken for the purposes aforesaid, who have not applied to the state of South-Carolina agreeable to the directions of the aforesaid ordinance for satisfaction, and received the same.

CHAP. 284.

An act to revive part of an act, entitled, an act to suppress excessive gaming.

The acts here alluded to are not retained in this collection.

WHEREAS by the repeal of the above recited act, gaming debts to any amount are recoverable before any jurisdiction in the state, whereby many abuses and injuries arise, and vice and immorality are encouraged: for remedy whereof,

No monies, &c. won by gaming recoverable,

1. *Be it enacted, &c.* That from and after the passing of this act, every promise, agreement, note, bill, bond or other contract, to pay, deliver or secure money or other

thing won or obtained by playing at cards, dice, tables, tennis, bowles or other games, horse-racing excepted, or by wagering or betting on either of the parties who shall play at such games, or to repay or secure money or other thing lent or advanced for that purpose, or lent or advanced at the time of such gaming, playing, betting, laying or adventuring, shall be void; and every conveyance or lease of land, tenements or hereditaments, sold, demised or mortgaged, and every sale, mortgage or other transfer of slaves or other personal estate to any person, or for his use, to satisfy or secure money so won, lent or advanced, on due proof made before any jurisdiction having cognizance thereof, shall be and is hereby declared void.

horse-racing excepted.
(Gaming tables forbidden, & other prohibitions, see 1791, c. 326—1794, c. 429—1798, c. 502—1800, c. 552—1801, c. 581.)
Securities void

CHAP. 285.

An act to amend the several acts of assembly to prevent dealing or trafficking with slaves.

WHEREAS the laws and regulations made to prevent dealing and trafficking with slaves, have been found insufficient to prevent that pernicious practice :

1. *Be it therefore enacted, &c.* That if any free person shall either buy from or sell to any slave or slaves, any kind of goods or commodities whatsoever, or any other thing, without a permission in writing, setting forth the identical article or articles such slave or slaves may have for sale, from the master, mistress or other person having the management of such slave or slaves, every such free person shall on conviction forfeit and pay the sum of ten pounds, and be further liable to pay all damages that may accrue in consequence of such trading or trafficking; one half thereof to the person informing, the other half to the person injured; to be levied of his or her property as other recoveries by law; and if the offender shall not have sufficient property to satisfy the judgment, then such offender shall be committed to close custody, and shall remain in prison without bail or mainprize for any time not exceeding three months.

Penalty on persons trading with slaves, &c.
(See 1741, c. 35, s. 12—1791, c. 335, s. 1—1805, c. 690—1819, c. 1001.)

2. *And be it further enacted,* That if any slave or slaves shall hereafter offer any article whatever for sale, without permission from his or her owner, master or overseer, it shall or may be lawful for any person knowing the same, to apprehend such slave or slaves, and on

Penalty on slaves offering any thing for sale without permission

due proof of the offence being made on oath before a justice of the peace of the county, he may order the said slave or slaves to receive any number of lashes, not exceeding thirty-nine, on his, her, or their bare back. *Provided nevertheless*, That this act shall not have effect or be in force until after the first day of March next.

CHAP. 286.

An act for establishing the dividing line between the counties of Burke and Rutherford.

WHEREAS the dividing line between the counties of Burke and Rutherford hath not yet been established, in consequence of which the lands west of the Apalachian mountain have been indiscriminately entered in the respective counties, contrary to the intent and meaning of an act of assembly in that case made and provided :

1. *Be it therefore enacted, &c.* That the lines as laid out, marked and extended by Joseph M'Dowall, junior, in the year one thousand seven hundred and eighty-five, viz. Beginning at the west point of the line that formerly divided the above said counties, thence west to the Indian boundary as in the act of assembly of the seventeenth of May, one thousand seven hundred and eighty-three ; which line is hereby established to be the dividing line between the counties of Burke and Rutherford ; any law, usage or custom to the contrary notwithstanding.

Dividing line
between Burke
and Rutherford.

CHAP. 287.

An act to annex part of Dobbs County to the County of Jones.

WHEREAS it is represented to the general assembly, that it would greatly add to the ease and convenience of a number of the inhabitants of Dobbs county, to be added to the county of Jones :

1. *Be it therefore enacted, &c.* That all that part of Dobbs county lying between the following lines, beginning at Dortche's mill, on Trent river, running from thence a direct line to the widow Jerman's, and from thence to Duplin line, then with the same to Onslow line, then with Onslow line to where Dobbs and Jones line intersect the same ; and that all that part of Dobbs between the said lines, be and the same is hereby added to

Part of Dobbs
annexed to
Jones county.

and made part of Jones county. *Provided always,* That nothing in this act shall be understood to prevent the sheriff or collectors of Dobbs county, from collecting all public taxes which are now due, or may be due for the year one thousand seven hundred and eighty-eight, in that part of the said county which comes within the description of this act.

CHAP. 288.

An act to annex a part of the county of Carteret to the county of Jones.

WHEREAS it is represented to the general assembly, that it would greatly add to the ease and convenience of a number of the inhabitants of Carteret county, to be added to the county of Jones :

1. *Be it therefore enacted, &c.* That all that part of Carteret county lying on the North side of White-Oak river and on the West side of Hunter's creek, be and the same is hereby annexed to and made part of Jones county. *Provided always,* That nothing in this act shall be understood to prevent the sheriff or collectors of Carteret county, from collecting all public taxes that are now due, or may be due for the year one thousand seven hundred and eighty-eight, in that part of the said county which comes within the description of this act.

CHAP. 289.

An act to amend an act, entitled, An act to prevent domestic insurrections.

WHEREAS by the before recited act it is enacted, that no person shall liberate or set free his or her slave except for meritorious services, to be adjudged and allowed of by the county court, and by the said act it is directed in what manner and for what purpose slaves illegally liberated shall be apprehended and sold : And whereas divers persons, from religious motives, in violation of the said law, continue to liberate their slaves, who are now going at large to the terror of the people of this state : And whereas the mode prescribed for apprehending such slave or slaves, is found by experience not to answer the good purposes by the said act intended, the power of apprehending liberated slaves being confin-

Proceedings a-
gainst slaves li-
berated contra-
ry to the origi-
nal act.

(Altered and a-
mended by
1795, c. 444, s.
3—1796, c. 453
—1801, c. 584,
s. 5—1818, c.
971.)

ed to freeholders only, and optional in them whether they will exercise the authority or not; and it appearing the said law is not fully adequate to the good purposes intended: Therefore,

1. *Be it enacted, &c.* That from and after the passing of this act, if any slave hath been liberated contrary to the before recited act, should be still within the limits of this state, and all slaves liberated after the passing of this act, should be known or suspected to be lurking in any of the inhabited parts thereof, then and in such case, on information made to any justice of the peace by any free-man, of such liberated slave or slaves going at large or lurking about, contrary to the true intent and meaning of the said act, then and in such case the justice to whom such information is made, is hereby empowered and required immediately to issue his warrant, directed to the sheriff of the county, commanding him to make diligent search and to apprehend all such slave or slaves, and to commit him, her or them to the gaol of the county, there to remain until the next succeeding court of the county; on which warrant all proceedings shall be regulated in the same manner as is directed by the before recited act; and that the person or persons apprehending any such slave or slaves by virtue of any such warrant, shall be entitled to the emoluments as is allowed freeholders by the before recited act. *Provided nevertheless,* That nothing in this act shall be construed to debar any freeholder or freeholder's from stepping forward in the execution of said law in the usual manner, or to divest them of the emoluments given by the said act.

CHAP. 290.

An act to admit to record certain deeds, grants and patents for lands heretofore obtained.

WHEREAS it is represented to this general assembly that some of the record books belonging to the secretary's office, in which deeds, grants and patents heretofore obtained have been recorded, are now lost or otherwise destroyed, whereby many of the good people of this state may be greatly injured. For prevention whereof,

Deeds, &c. to be
recorded where
record books
have been lost,
&c.

1. *Be it enacted, &c.* That it shall and may be lawful for his excellency the governor for the time being, by and with the consent of the council of state, on application

of any person or persons having a deed, grant or patent for lands in such predicament, (provided it shall appear to them that such deed, grant or patent had been fairly obtained, and the requisites of the law fully complied with) to order the secretary to record such deed, grant or patent; and on such order, the secretary is hereby directed to record in his office such deed, grant or patent for lands so ordered, together with such order; which deed, grant or patent so recorded, shall be as good and valid in law, to all intents and purposes whatsoever, as if such former records had never been lost or destroyed; and in any controversy at law that may happen in consequence thereof, this act may be given in evidence to support the validity of the record of such deed, grant or patent; any law to the contrary notwithstanding.

CHAP. 291.

An act for the relief of persons who have suffered or may suffer by their grants, deeds and mesne conveyances not being proved and registered within the time heretofore appointed by law, and to grant a further time for registering certain grants heretofore issued from lord Granville's office, and to direct transcripts of the records of Orange and Tyrrel counties to be made.

WHEREAS many persons through ignorance of the law have neglected to have their grants, deeds and mesne conveyances registered, according to the directions of the several acts of assembly in such case made and provided: For remedy whereof,

1. *Be it enacted, &c.* That all grants of lands entered in the land office under the present government, which have not been registered within the times heretofore appointed by law, shall and may, within two years after the passing of this act, (a) be admitted to registration, and shall be as good and valid as if they had been registered within the time heretofore allowed by law.

Time for registering grants not already registered.

a [See 1786, c. 257, s. 6—1790, c. 328.]

2. *And be it further enacted,* That all deeds and mesne conveyances of lands, tenements and hereditaments not already registered, acknowledged or proved, shall and may, within two years after the passing of this act, (b) be acknowledged by the grantor or grantors, his or their agents or attornies, or proved by one or more of the subscribing witnesses to the same, and tendered or delivered to the registers of the counties where such lands, tene-

Time for registering deeds & mesne conveyances.

b [See 1786, c. 257, s. 6—1790, c. 328.]

ments or hereditaments are respectively situated ; and all patents, grants, deeds and mesne conveyances whatsoever, which shall be acknowledged or proved according to the directions of this act, shall be good and valid, and enure and take effect as fully, to the use and benefit of the grantees, their heirs and assigns, as if such patents, grants, deeds and mesne conveyances had been acknowledged or proved and registered agreeably to the directions of any law heretofore made.

Time for proving and registering grants from Lord Granville's office.

(See 1787, c. 279, s. 2—1790, c. 328.)

3. And whereas many persons through inattention have failed to have their grants, heretofore issued from lord Granville's office, registered within the time limited by act of assembly, passed at Tarborough, in November, one thousand seven hundred and eighty-seven : *Be it enacted*, That all grants heretofore issued from lord Granville's office, and not yet registered, may be admitted to probate and registration at any time within two years from and after the passing of this act, under the rules, restrictions and provisions contained in the act aforesaid, passed at Tarborough, in November, one thousand seven hundred and eighty-seven, entitled, An act to amend the several acts of assembly heretofore passed, for giving further time to surveyors within the different counties to make their surveys, and return plats thereof to the secretary's office ; and for giving further time for the registration of certain deeds issued from lord Granville's office, and marriage contracts therein mentioned. (a)

a [1787, c. 279.]

Certain western lands how to be registered. (Obsolete.)

4. *Be it further enacted*, That all lands entered in the office of John Armstrong, west of Cumberland mountain, shall be registered in the county in which the proprietor of the said lands may reside : *Provided always*, That persons owning such lands in this state, westward of the said mountain, and not residing therein, shall register their grants for such lands in the county of Hawkins.

CHAP. 292.

An act for appointing an additional judge of the superior court of the district of Morgan, and for the relief of persons who have or may hereafter forfeit their recognizances in the superior and county courts.

So much of this act as respects the appointment of a judge is omitted as useless.

1. WHEREAS application hath often been made to the general assembly by persons who have forfeited their recognizances, and conceive they have reason to pray relief therein: *Be it enacted*, That the judges of the superior court, in their several districts in court, are hereby fully authorised and empowered to receive, hear and determine on the petition or petitions of all persons who may conceive they merit relief on their recognizances forfeited, and to lessen or absolutely remit the same, and to do all and every thing therein as they shall deem just and right, and consistent with the welfare of the state as well as the persons praying such relief; which power shall extend to the relief of those persons against whom final judgment hath been entered, and execution awarded accordingly.

Relief on forfeited recognizances.
(See 1795, c. 442.)

2. *And be it further enacted*, That the several county courts of pleas and quarter-sessions in this state, shall have power to remit or mitigate all fines by them inflicted, and all forfeitures on recognizances, previous to entering final judgment thereon; (a) *Provided*, a majority (b) of the justices in the said county be present when such remittance or mitigation shall be made: *Provided also*, That if any person or persons shall be dissatisfied with the judgment or decree of any county court entering final judgment against him or them on forfeited recognizances, shall be entitled to an appeal to the superior court of the district, under the same rules and regulations of other appeals; which superior court is hereby authorised to determine on the premises as in other cases in this act directed: *Provided*, That nothing contained in this act shall be construed to debar the county solicitor, or attorney for the state, from appealing on any judgment given, wherever he shall conceive the state has been injured, but that in all such determinations, he is hereby expressly required to pray an appeal, which the said court shall grant accordingly.

County courts may remit fines, &c.

Provisoos.
a [See 1795, c. 442—1801, c. 587.]
b [7 Justices, by 1801, c. 393.]

Appeals.

CHAP. 293.

An act to encourage the building of iron works in this state.

WHEREAS it appears to the general assembly, that several places in this state are advantageously situated for the building of iron works ; and in order to encourage any person or persons who will undertake and erect the same :

Lands granted to proprietors of iron-works.

1. *Be it enacted, &c.* That three thousand acres of vacant land, not fit for cultivation, most convenient to the different seats, is hereby granted for every set of iron works, as a bounty from this state, to any person or persons who will build and carry on the same ; to be under the following rules and regulations, *viz.* Where any person or persons intend to build iron works, such person or persons may proceed to the entry-taker of the county where he intends to erect such works, and enter in one or more tracts the quantity of bounty land allowed by this act for one set of works ; and the entry-taker or entry-takers is and are hereby required to make out a copy of the land entered as aforesaid, and transmit the same to the next court that shall be held in the county in which he or they are entry-takers.

Jury to view the land.

Proceedings on their return.

2. *And be it further enacted,* That the court of any county in this state, upon receiving the return of the entry-taker for the land as aforesaid, such court shall proceed to appoint a jury, consisting of twelve persons, who are of good character ; and the jury so appointed shall proceed to view the land in their county entered as aforesaid, and if they shall adjudge the land so entered not fit for cultivation, they shall certify the same in writing, and return the certificate to the next court held in their county, and the court upon receiving such return, shall cause the certificate to be recorded by the clerk.

Conditions to entitle the proprietors to the land granted.

3. *And be it further enacted,* That if any person or persons who may enter land agreeably to this act, shall erect iron works within the term of three years from the time of the jury's return, such person or persons, on making it appear to the court of the county that he or they have made at said works five thousand weight of iron, shall receive an order to the entry-taker, requiring him to issue the warrants for the bounty land.

Manner in which the grants are to be obtained.

4. *And be it further enacted,* That such entry-taker upon receiving such order, shall proceed to issue warrants for the lands granted by this act, without receiving any

money for the state ; and the surveyor upon receiving such warrants shall proceed to survey the same as soon as convenient, and make return to the secretary's office, that grants may issue for the same ; and such grant or grants shall be as good and valid to the proprietors of such works, their heir, heirs or assigns, as if the purchase money had been paid : *Provided nevertheless*, That if any person or persons shall enter land in pursuance of this act, and fail to erect iron works according to the true intent and meaning thereof, the land so entered shall revert to the state, unless the person who has entered the same pays the purchase money for the use of the state.

Proviso, the
land to revert

3. *And be it further enacted*, That the bounty lands granted by this act shall be exempted from taxation for the term of ten years.

Lands exempt
from taxation
for 10 years

CHAP. 294.

An act for dividing the county of Rowan.

WHEREAS the extent of the county of Rowan renders it inconvenient and troublesome to many of the inhabitants thereof to attend the courts, annual elections, juries and other public meetings therein :

1. *Be it enacted, &c.* That from and after the passing of this act, the said county of Rowan shall be divided by a line beginning where Coddle creek enters Mecklenberg, and running up the east fork of the said creek to the road leading from Beatie's ford to Salisbury, from thence a strait course to Alexander M'Korkle's, senior, from thence to the south fork of the Yadkin river, at the mouth of a branch in Margaret Dobbins's meadow, and from thence due north to the Surry line ; that all that part of the said county of Rowan lying westwardly of the said dividing line, shall thenceforth be erected into a new and distinct county, by the name of Iredell.

Division line.

Iredell county
erected.

2. *And be it further enacted*, That after the passing of this act, the said county of Iredell shall be, continue and remain part of the district of the superior court of law and the court of equity usually held for the district of Salisbury ; and the county treasurer of the said county of Iredell, shall from time to time account for and pay to the treasurer of this state for the time being, all public levies by him collected, or wherewith he shall be chargeable, in the same manner, and under the like pains and penalties, as other county treasurers.

Included in
Salisbury dis-
trict.
(Obsolete.)

CHAP. 295.

An act to annex part of Brunswick county to the county of New-Hanover.

WHEREAS it is represented to the general assembly, that the inhabitants of Brunswick county, who reside in the fork of Black river and the north-west branch of Cape-Fear river, suffer many inconveniencies in performing their public duties, having to cross the North-West river, which in time of freshes is difficult, if not impracticable : For remedy whereof,

Part of Brunswick added to New-Hanover.

Proviso.

1. *Be it enacted, &c.* That from and after the passing of this act, all that part of the county of Brunswick which lies in the fork of Black river and the North-West, as far as the Bladen line, shall hereafter be annexed to the County of New-Hanover ; any law, usage or custom to the contrary notwithstanding. *Provided nevertheless,* That nothing herein contained shall prevent the sheriff or collectors of Brunswick county from collecting the taxes due, or from suits commenced to be prosecuted to final issue in said county.

CHAP. 296.

An act to annex part of Bladen county to Robeson county, and to amend an act, entitled, an act to divide the county of Bladen.

WHEREAS it is represented to this general assembly that all that part of the inhabitants west of the Great Swamp, in Bladen county, are inconveniently situated to attend the public meetings at the court house in the said county, and petitions to be added to the county of Robeson ; which would be productive of many advantages, by enabling them to keep in repair certain roads crossing the Great Swamp, and also to attend the courts of Robeson county with much convenience, to which they should belong by a natural boundary :

Part of Bladen annexed to Robeson.

1. *Be it therefore enacted, &c.* That from and after the passing of this act, all that part of the county of Bladen west of the Great Swamp, be and the same is hereby annexed to and shall remain part of the county of Robeson ; and that the dividing line between the said two counties shall be and forever remain as herein described, *viz.* Beginning at the line dividing this state from South-Carolina, where it crosses Drowning creek, and the said Drowning creek to be the line (as it now is) to the mouth

of the aforesaid Great Swamp, thence up the meanders of the east side of the said swamp to the head thereof, commonly called the Galberry, and thence a direct line to the head of Gilley's branch, and down the meanders of said branch to Rockfish creek, and thence to the nearest point to the Cumberland line.

Read three times and ratified in General Assembly, }
the 6th day of December, Anno Dom. 1788. }

SIGNED BY

ALEX. MARTIN, S. S.

JOHN SITGREAVES, S. C.

ORDINANCE,

For fixing the Seat of Government of North-Carolina.

CHAP. 297.

Extract from the Journal of the House of Commons, Thursday, December 6, 1787.

RESOLVED, That it be recommended to the people of this state, to authorise and direct their respective representatives, to be elected for the purpose of deliberating on the federal constitution, to fix on the place for holding the future meetings of the general assembly, and the place of residence of the chief officers of the state; which, when fixed, shall be considered the unalterable seat of government for this state.

By a Convention of Delegates of the People of North-Carolina, elected pursuant to a recommendation of the General Assembly of the said State, and assembled at the town of Hillsborough, on the twenty-first day of July, in the year one thousand seven hundred and eighty-eight.

An Ordinance for establishing a place for holding the future meetings of the General Assembly, and the place of residence of the chief officers of the state.

WHEREAS in pursuance of a recommendation of the general assembly, passed on the sixth day of December, one thousand seven hundred and eighty-seven, this convention hath been elected by such of the inhabitants of this state as are entitled to vote for representatives of the House of Commons, for the purpose (together with that of deliberating and determining on the new constitution of government for the United States of America, proposed by the late federal convention) of fixing on the place for holding the future meetings of the general assembly, and the place of residence of the chief

officers of the state, which place when fixed, is to be considered the unalterable seat of government for this state: And whereas this convention, previous to their voting for any place for the above purposes, did pass a resolution, in the words following, *viz.* “*Resolved, That this convention will not fix the seat of government at any one particular point, but that it shall be left at the discretion of the Assembly to ascertain the exact spot: Provided always, That it shall be within ten miles of the point or place determined on by this convention:*” And whereas upon a ballot being taken, pursuant to a resolve of this convention, a majority of the said convention voted for the plantation whereon Isaac Hunter now resides, in the county of Wake, as the place at which, or within ten miles of which, a place for the above purposes should be fixed on by the general assembly, agreeable to the above resolution:

Seat of government fixed.

Be it therefore ordained by this convention, on behalf of the people of the state of North-Carolina, and it is hereby ordained by the authority of the same, That the said plantation whereon the said Isaac Hunter now resides, or such place as the general assembly shall fix upon within ten miles of the said plantation, pursuant to the true intent and meaning of the above recited resolution of this convention, shall be the place for holding the future meetings of the general assembly, and the place of residence of the chief officers of the state, and the unalterable seat of government of this state, except by the authority of the people in convention met for the said purpose: (a) Provided always, That until convenient buildings can be erected on the said place for the said purposes, it shall be in the power of the general assembly, from time to time, to appoint any other place or places for the meeting of the general assembly, and for the residence of the chief officers of the state; any thing in this ordinance to the contrary notwithstanding.

a [See 1791, c. 337—1792, c. 367, s. 4—1794, c. 420.];

Ratified in Convention, the 4th day of August, }
Anno Domini 1788. }

SAMUEL JOHNSTON, *President.*

By Order,

J. HUNT, *Secretary.*

APPENDIX.

At a general assembly, begun and held at Fayetteville, on the second day of November, in the year of our Lord one thousand seven hundred and eighty-nine, and in the fourteenth year of the independence of the said state: Being the first session of the said Assembly.

Samuel Johnston, Esq. governor.

CHAP. 298.

An act directing the mode of choosing senators to represent this state in the congress of the United States.

1. *Be it enacted, &c.* That the legislature of this state shall, at their annual meeting, whenever a senator or senators are to be chosen, at such time during their sessions as they shall appoint, by joint ballot of both houses of the general assembly, elect such senator or senators as may be necessary, under the inspection of two members from each house: and it shall be necessary to have a majority of votes of both houses to elect any person for that purpose.

Manner, &c. of choosing senators.

2. *And be it further enacted,* That the person or persons so elected senator or senators, shall obtain a certificate of his or their election, signed by the speakers of the two houses, and shall be commissioned by the governor for the time being, with the great seal of the state annexed to the commission.

How commissioned.

CHAP. 299.

An act for the purpose of ceding to the United States of America, certain western lands therein described.

(See 1784, c. 196, s. 1, 2—1803, c. 628—1811, c. 817, s. 1, 2—acts congress, 1806, April 18th, vol. 4, L. U. S. p. 39, new ed.)

WHEREAS the United States in Congress assembled have repeatedly and earnestly recommended to the respective states in the union claiming or owning vacant western territory, to make cessions of part of the same, as a further means, as well of hastening the extinguishment of the debts, as of establishing the harmony of the United States; and the inhabitants of the said western

territory being also desirous that such cession should be made, in order to obtain a more ample protection than they have heretofore received: Now this state being ever desirous of doing ample justice to the public creditors, as well as the establishing the harmony of the United States, and complying with the reasonable desires of her citizens:

Persons empowered to execute deeds ceding to U. S. western lands.
a [The deed was executed the 25th Feb. 1790, see L. U. S. 2d v. p. 85, new ed.]

Boundaries thereof.

1. *Be it enacted, &c.* That the senators of this state in the congress of the United States, (a) or one of the senators and any two of the representatives of this state in the congress of the United States, are hereby authorised, empowered and required to execute a deed or deeds on the part and behalf of this state, conveying to the United States of America all right, title and claim which this state has to the sovereignty and territory of the lands situate within the chartered limits of this state, west of a line beginning on the extreme height of the Stone Mountain, at the place where the Virginia line intersects it, running thence along the extreme height of the said mountain, to the place where Wataugo river breaks through it, thence a direct course to the top of the Yellow Mountain, where Bright's road crosses the same, thence along the ridge of said mountain between the waters of Doe river and the waters of Rock creek, to the place where the road crosses the Iron Mountain, from thence along the extreme height of said mountain, to where Nolichucky river runs through the same, thence to the top of the Bald Mountain, thence along the extreme height of the said mountain to the Painted Rock, on French-Broad river, thence along the highest ridge of the said mountain, to the place where it is called the Great-Iron or Smoaky-Mountain, thence along the extreme height of the said mountain, to the place where it is called Unicoy or Unaka Mountain, between the Indian towns of Cowee and Old Chota, thence along the main ridge of the said mountain, to the southern boundary of this state, upon the following express conditions, and subject thereto; *that is to say,*

Conditions of the cession.

1st, as to expenses of the revolutionary war.

First. That neither the lands nor inhabitants westward of the said mountain shall be estimated, after the cession made by virtue of this act shall be accepted, in the ascertaining the proportion of this state with the United States in the common expense occasioned by the late war.

Secondly. That the lands laid off, or directed to be

laid off, by any act or acts of the general assembly of this state, for the officers and soldiers thereof, their heirs and assigns respectively, shall be and enure to the use and benefit of the said officers, their heirs and assigns respectively; and if the bounds of the said lands already prescribed for the officers and soldiers of the continental line of this state, shall not contain a sufficient quantity of lands fit for cultivation, to make good the several provisions intended by law, that such officer or soldier, or his assignee, who shall fall short of his allotment or proportion after all the lands fit for cultivation within the said bounds are appropriated, be permitted to take his quota, or such part thereof as may be deficient, in any other part of the said territory intended to be ceded by virtue of this act, not already appropriated. And where entries have been made agreeable to law, and titles under entries have been made agreeable to law, and titles under entries have not been perfected by grant or otherwise, then and in that case the governor for the time being, shall, and he is hereby required to perfect, from time to time, such titles, in such manner as if this act had never been passed; and that all entries made by, or grants made to all and every person and persons whatsoever, agreeable to law, and within the limits hereby intended to be ceded to the United States, shall have the same force and effect as if such cession had not been made, and that all and every right of occupancy and pre-emption, and every other right reserved by any act or acts, to persons settled on and occupying lands within the limits of the lands hereby intended to be ceded as aforesaid, shall continue to be in full force in the same manner as if the cession had not been made, and as conditions upon which the said lands are ceded to the United States. And further, it shall be understood that if any person or persons shall have, by virtue of the act, entitled, An act for opening the land office, for the redemption of specie and other certificates, and discharging the arrears due to the army, passed in the year one thousand seven hundred and eighty-three, made his or their entry in the office usually called John Armstrong's office, and located the same to any spot or piece of ground on which any other person or persons shall have previously located any entry or entries, that then and in that case, the person or persons having made such entry or entries, or their assignee or assignees, shall have leave and be at full liberty to remove the location of such entry or entries to any lands on which no entry

2d, as to milita-
ry state grants

Titles under en-
tries to be per-
fected.

The effect of
legal entries &
grants.

Right of occu-
pancy and pre-
emption.

Locations on en-
tries made in
John Arm-
strong's office,

Proviso, as to grants declared void.

3d, as to the lands ceded being a common fund.

4th, as to the territory ceded being formed into a state.

Proviso, as to slavery.

5th, as to contributions towards the war expenses, see 1st condition.

6th, as to payment of debts to the state.

has been specially located, or any vacant lands included within the limits of the lands hereby intended to be ceded. *Provided*, That nothing herein contained shall extend or be construed to extend to the making good any entry or entries, or any grant or grants heretofore declared void by any act or acts of the general assembly of this state.

Thirdly. That all the lands intended to be ceded by virtue of this act, to the United States of America, and not appropriated as before mentioned, shall be considered as a common fund for the use and benefit of the United States of America, North-Carolina inclusive, according to their respective and usual proportion in the general charge and expenditure, and shall be faithfully disposed of for that purpose, and for no other use or purpose whatever.

Fourthly. That the territory so ceded, shall be laid out and formed into a state or states, containing a suitable extent of territory, the inhabitants of which shall enjoy all the privileges, benefits and advantages set forth in the ordinance of the late congress for the government of the western territory of the United States; *that is to say*, Whenever the congress of the United States shall cause to be officially transmitted to the executive authority of this state, an authenticated copy of the act to be passed by the congress of the United States, accepting of the cession of territory made by virtue of this act, under the express conditions hereby specified, the said congress shall at the same time assume the government of the said ceded territory, which they shall execute in a manner similar to that which they support in the territory west of the Ohio, shall protect the inhabitants against enemies, and shall never bar or deprive them or any of them, of privileges which the people west of the Ohio enjoy. *Provided always*, That no regulations made or to be made by congress, shall tend to emancipate slaves.

Fifthly. That the inhabitants of the said ceded territory shall be liable to pay such sums of money as may, from taking their census, be their just proportion of the debt of the United States, and the arrears of the requisitions of congress on this state.

Sixthly. That all persons indebted to this state, residing in the territory intended to be ceded by virtue of this act, shall be held and deemed liable to pay such debt or

debts, in the same manner, and under the same penalty or penalties, as if this act had never been passed.

Seventhly. That if the congress of the United States do not accept the cession hereby intended to be made, in due form, and give official notice thereof to the executive of this state, within eighteen months from the passing of this act, then this act shall be of no force or effect whatsoever.

7th, as to the acceptance of the cession. -

Eighthly. That the laws in force and use in the state of North-Carolina at the time of passing this act, shall be and continue in full force within the territory hereby ceded, until the same shall be repealed, or otherwise altered by the legislative authority of the said territory.

8th, as to laws in force.

Ninthly. That the lands of non-resident proprietors, within the said ceded territory, shall not be taxed higher than lands of residents.

9th, as to taxing lands of non residents.

Tenthly. That this act shall not prevent the people now residing south of French-Broad, between the rivers Tennessee and Pidgeon, from entering their pre-emptions on that tract, should an office be opened for that purpose under an act of the present general assembly.

10th, as to pre-emption between Tennessee & Pidgeon.

2. *And be it further enacted,* That the sovereignty and jurisdiction of this state, in and over the territory aforesaid, and all and every the inhabitants thereof, shall be and remain the same in all respects, until the congress of the United States shall accept the cession to be made by virtue of this act, as if this act had never passed.

Jurisdiction, &c. of this state to remain till congress accept. (The cession was accepted by congress, see act of 2d April, 1790, see 2d v. L. U. S. p. 85.)

CHAP. 300.

An act to annex the county of Anson to Fayetteville district, and to regulate the appointment of jurors to Fayetteville court.

WHEREAS it is represented to this general assembly, that it will tend greatly to the convenience of the good people of Anson county, to be annexed to the district of Fayetteville: Therefore,

1. *Be it enacted, &c.* That from and after the passing of this act, the county of Anson shall be annexed to and form a part of the district of Fayetteville, in the same manner as if the said county of Anson had originally been part of said district.

Anson added to Fayette district. (Obsolete.)

CHAP. 301.

An act for dividing the county of Surry into two distinct counties, and for other purposes.

WHEREAS the large extent and inconvenient situation of the county of Surry, render the attendance of the inhabitants of the extreme parts at courts, elections and general musters, difficult and expensive: For remedy whereof, and to gratify the wishes of the good people of the said county:

Division of Surry.

1. *Be it enacted, &c.* That from and after the passing of this act, the county of Surry shall be divided into two distinct counties, by a line beginning on the line dividing this state from the state of Virginia, at a point equidistant from the nearest parts of the counties of Rockingham and Wilkes, and running from thence until it intersects the Rowan county line, so as to leave an equal number of acres in each county.

Stokes county erected.

2. *And be it further enacted,* That all that part of the said county, lying west of said line, shall be erected into a distinct county by the name of Surry county; and all that part lying east of said line, shall be erected into another distinct county by the name of Stokes county.

CHAP. 302.

An act the better to regulate the inspection of tobacco in this state;

WHEREAS the laws now in force to regulate the inspection of tobacco, are found not to answer the intended purpose:

Inspectors' duty.

1. *Be it therefore enacted, &c.* That from and after the passing of this act, the inspectors of tobacco at the several warehouses of this state, shall and they are hereby required to examine, by breaking in at one or more places, all tobacco which shall be brought to their respective warehouses for inspection.

Inspector to give a note.
(See 1817, c. 942, s. 2.)

2. *And be it further enacted,* That the several inspectors of tobacco shall and they are hereby required when they shall have inspected and branded any hogshead of tobacco agreeable to the directions of this act, to give the person claiming such hogsheads, a note for the same, certifying the mark, number, and weight thereof.

And manifest, when delivered 3. *And be it further enacted,* That when any tobacco shall be delivered out of the warehouse, the inspectors

shall and they are hereby required, to give a separate manifest of each hogshead of tobacco by them so delivered, in which shall be inserted the mark, number, and weight, of said tobacco.

out of the warehouse.

4. *And be it further enacted*, That if any person shall brand or cause to be branded any hogshead of tobacco which the inspectors had not examined and branded, so as to induce a belief that such hogshead, had been lawfully inspected, such person shall forfeit and pay the sum of fifty pounds, to be recovered before any county court, by any person suing for the same, to his own proper use.

Penalty on altering brand, &c.

CHAP. 303.

An act to amend an act, entitled, an act to prevent the exportation of unmerchantable commodities.

(Sec 1784, c. 206, and the acts there referred to.)

1. *Be it enacted, &c.* That an inspection be and hereby is established on Neuse river, at Harris's landing or ferry, heretofore Bryan's, under the same rules, regulations and restrictions, as directed by the above recited act; and the county court of Craven are hereby directed and empowered to appoint an inspector for the said landing, at the same time and in the same manner as other inspectors for the said county are appointed, who shall have the same advantages, and be subject to the same pains and penalties, as other inspectors; and commodities by him inspected and passed shall be merchantable and proper for shipping, in like manner with those inspected by other inspectors above the town of Newbern.

Inspection established on Neuse river, at Harris' landing, &c.

CHAP. 304.

An act to ratify the amendments to the constitution of the United States.

WHEREAS the senate and house of representatives of the United States of America in congress assembled, on the fourth day of March, did resolve, two thirds of both houses concurring, that the following articles be proposed to the legislatures of the several states, as amendments to the constitution of the United States; all or any of which articles, when ratified by three fourths of the said legislatures, to be valid to all intents and purposes as part of the said constitution: (a)

a [See the amendments to the constitution, p. 73, & see 1786, c. 247, & 1794, c. 408.]

Ratification of
the amend-
ments.

1. *Be it therefore enacted, &c.* That the said amendments, agreeable to the fifth article of the original constitution, be held and ratified on the part of this state, as articles in addition to and amendments of the constitution of the United States of America.

CHAP. 305.

An act to establish an University in this State.

(See c. 306—
1791, c. 352—
1794, c. 405 &
420—1798, c.
512—1800, c.
548—1801, c.
57—1804, c.
647—1805, c.
677 & 678—
1807, c. 704—
1809, c. 763.)

Trustees nomi-
nated, and con-
stituted a body
politic.

WHEREAS in all well regulated governments, it is the indispensable duty of every legislature to consult the happiness of a rising generation, and endeavor to fit them for an honorable discharge of the social duties of life, by paying the strictest attention to their education : And whereas an university supported by permanent funds, and well endowed, would have the most direct tendency to answer the above purpose :

1. *Be it therefore enacted, &c.* That Samuel Johnston, James Iredell, Charles Johnson, Hugh Williamson, Stephen Cabarrus, Richard Dobbs Spaight, William Eloust, Benjamin Williams, John Sitgreaves, Frederick Harget, Robert W. Snead, Archibald Maclaine, honourable Samuel Ashe, Robert Dixon, Benjamin Smith, honourable Samuel Spencer, John Hay, James Hegg, Henry William Harrington, William Barry Grove, reverend Samuel McCorkle, Adlai Osborne, John Stokes, John Hamilton, Joseph Graham, honourable John Williams, Thomas Person, Alfred Moore, Alexander Mebane, Joel Lane, Willie Jones, Benjamin Hawkins, John Haywood, senior, John Macon, William Richardson Davie, Joseph Dixon, William Lenoir, Joseph McDowall, James Holland, and William Porter, esquires, shall be and they are hereby declared to be a body politic and corporate, to be known and distinguished by the name of *The Trustees of the University of North-Carolina*, and by that name shall have perpetual succession, and a common seal ; and that they the trustees and their successors, by the name aforesaid, or a majority of them, shall be able and capable in law to take, demand, receive and possess all monies, goods and chattels that shall be given them, for the use of the said university, and the same apply according to the will of the donors, and by gift, purchase or devise to take, have, receive, possess, enjoy and retain to them and their successors forever, any lands, rents,

tenements and hereditaments, of what kind, nature or quality soever the same may be, in special trust and confidence that the same or the profits thereof shall be applied to and for the use and purposes of establishing and endowing the said university.

2. *And be it enacted*, That the said trustees and their successors, or a majority of them, by the name aforesaid, shall be able and capable in law to bargain, sell, grant, demise, alien or dispose of, and convey and assure to the purchasers, any such lands, rents, tenements and hereditaments aforesaid, when the condition of the grant to them, or the will of the devisor, does not forbid it. And further that they the said trustees and their successors forever, or a majority of them, shall be able and capable in law, by the name aforesaid, to sue and implead, be sued and impleaded, answer and be answered, in all courts of record whatsoever; and they shall have power to open and receive subscriptions, and in general they shall and may do all such things as are usually done by bodies corporate and politic, or such as may be necessary for the promotion of learning and virtue.

Their authority.

3. *And be it further enacted*, That the said trustees, in order to carry the present act into effect, shall meet at Fayetteville, on the third Monday in the session of the next general assembly, at which time they shall choose a president and secretary; and shall then fix the time of their next annual meeting; and at every annual meeting of the trustees, the members present, with the president and treasurer, (a) shall be a quorum to do any business, or a majority of the members, without either of those officers, shall be a quorum; but at their first meeting as above directed there shall be at least fifteen of the above trustees present, in order to proceed to business: and the trustees at their annual meeting may appoint special meetings within the year; or in case unforeseen accidents shall render a meeting necessary, the secretary, by order of the president and any two of the trustees signified to him in writing, shall by particular notice to each trustee, as well as by an advertisement in the State Gazette, convene the trustees at the time proposed by the president; and the members thus convened shall be a quorum to do any business except the appointment of a president or professors in the university, or the disposal or appropriation of monies; but in case of the death or resignation of the president or any professor, the trustees thus con-

Meetings of the trustees, &c.

a [Treasurer need not be present, sec 1798, c, 512, s. 1.]

Special meeting.

Its power.

vened may supply the place until the next annual meeting of the board of trustees and no longer ; and the meeting at which the seat of the said university shall be fixed, shall be advertised in the Gazette of this state at least six months, and notice in manner aforesaid to each of the trustees of the object of the said meeting.

Appointment &
duty of a treasurer, &c.

4. *And be it further enacted*, That the trustees shall elect and commissionate some person to be treasurer for the said university during the term of two years : which treasurer shall enter into bond with sufficient securities to the governor, for the time being, in the sum of five thousand pounds, conditioned for the faithful discharge of his office, and the trust reposed in him ; and that all monies and chattels belonging to the said corporation that shall be in his hands at the expiration of his office, shall then be immediately paid and delivered into the hands of the succeeding treasurer : And every treasurer shall receive all monies, donations, gifts, bequests and charities whatsoever, that may belong or accrue to the said university during his office, and at the expiration thereof shall account with the trustees for the same, and the same pay and deliver over to the succeeding treasurer ; and on his neglect or refusal to pay and deliver as aforesaid, the same method of recovery may be had against him, as is or may be provided for the recovery of monies from sheriffs or other persons chargeable with public monies : And the treasurer of the university shall cause annually to be published in the State Gazette, for the satisfaction of the subscribers and benefactors, a list of all monies and other things by him received for the said university, either by subscription, legacy, donation or otherwise, under the penalty of one hundred pounds, to be recovered at the suit of the attorney-general, in the name of the governor for the time being, in any court of record having cognizance thereof ; and the monies arising from such penalties shall be appropriated to the use of the said university.

Subscriptions to
be a permanent
fund.

5. *Be it further enacted*, That the said trustees shall on no event or pretence whatsoever, appropriate or make use of the principal of the monies by them received on subscription, but such principal shall be and remain as a permanent fund for the use and support of the said university forever.

Directions as to
fixing on the

6. *And be it further enacted*, That when the trustees shall deem the funds of the said University adequate to

the purchase of a necessary quantity of land and erecting the proper buildings, they shall direct a meeting of the said trustees for the purpose of fixing on and purchasing a healthy and convenient situation, which shall not be situate within five miles of the permanent seat of government, or any of the places of holding the courts of law or equity; which meeting shall be advertised at least six months in some gazette in this state, and at such superior courts as may happen within that time.

7. *Be it further enacted*, That the trustees shall have the power of appointing a president of the university, and such professors and tutors as to them shall appear necessary and proper, whom they may remove for misbehaviour, inability or neglect of duty; and they shall have the power to make all such laws and regulations for the government of the university and preservation of order and good morals therein, as are usually made in such seminaries, and as to them may appear necessary; provided the same are not contrary to the unalienable liberty of a citizen, or to the laws of the state. And the faculty of the university, *that is to say*, the president and professors, by and with the consent of the trustees, shall have the power of conferring all such degrees or marks of literary distinction, as are usually conferred in colleges or universities.

place for the university.
(Obsolete.)

Power of the trustees to appoint a president, professors, &c.
And to make regulations, &c.

To confer degrees.

8. *And be it further enacted*, That every person who within the term of five years shall subscribe ten pounds towards this university, to be paid within five years, at five equal annual payments, shall be entitled to have one student educated at the university, free from any expense of tuition.

Benefit granted to subscribers.

9. *And be it further enacted*, That the public hall of the library and four of the colleges shall be called severally by the names of one or another of the six persons who shall within four years contribute the largest sums towards the funds of this university, the highest subscriber or donor having choice in the order of their respective donations. And a book shall be kept in the library of the university, in which shall be fairly entered the names and places of residence of every benefactor to this seminary, in order that posterity may be informed to whom they are indebted for the measure of learning and good morals that may prevail in the state.

Honor to be conferred on the six largest subscribers.

Names of subscribers to be preserved.

CHAP. 306.

An act for raising a fund for erecting the buildings and for the support of the university of North-Carolina.

WHEREAS the general assembly by their act, entitled, an act to establish a university in this state, passed on the eleventh day of December instant, have declared that a university shall be established and erected in this state, which shall be called and known by the name of the university of North-Carolina: and whereas adequate funds will be found to be the means which will most effectually insure to the state the advantages to be hoped and expected from such an institution:

Funds appropriated for erecting buildings for the university, &c.
(Obsolete.)

1. *Be it therefore enacted, &c.* That a gift of all monies due and owing to the public of North-Carolina, either for arrearages under the former or present government, up to the first day of January, one thousand seven hundred and eighty-three, inclusive, (monies or certificates due for confiscated property purchased excepted) shall be and is hereby declared to be fully and absolutely made, for the purpose of erecting the necessary buildings, employing professors and tutors, and carrying into complete effect the act before recited: and the treasurer is hereby directed and required to commence suits, and to prosecute all persons owing as above mentioned, and the monies recovered in consequence thereof to pay into the hands of the trustees named in said act, or their successors, to be applied to the purposes aforesaid. *Provided,* That nothing herein contained shall be construed to prevent the treasurer or comptroller from settling with and collecting from the executors of Robert Lanier, deceased, late treasurer of Salisbury district, such sums in cash or certificates as may on a final settlement of his accounts be found to be due to the public; nor shall it extend to prevent their collecting from the sheriffs of that district, their arrearages of taxes which became due under the present government, and which ought to have been paid into the office of the said Lanier, as treasurer aforesaid; *Provided,* They make such collection within the space of two years, after which time the arrearages of that district also shall be considered as being included in this gift.

2. *And be it enacted,* That all the property that has heretofore or shall hereafter escheat to the state, shall be and hereby is vested in the said trustees, for the use and benefit of the said university.

Endowed with all escheat property.
(See 1800, c. 548, s. 1, and 1805, c. 877.)

3. *And be it further enacted*, That the lands and other property belonging to the university aforesaid, shall be, and the same is hereby exempt from all kind of public taxation.

University lands, &c. exempt from taxes.

CHAP. 307.

An act to alter the time of electing the members of the general assembly in this state. (See 1777, c. 116, s. 2—1819, c. 1000.)

WHEREAS it has been made appear to this general assembly, that in large counties it is sometimes impossible for the sheriff and inspectors to get the tickets counted out until Sunday morning, which often occasions the breach of the Sabbath day : For remedy whereof,

1. *Be it enacted, &c.* That from and after the passing of this act, the annual election for the purpose of electing members of the general assembly, shall be held in each and every year on the second Thursday and Friday of August : *Provided*, That where there are two or more elections in any county, such elections shall be held in the same week that the other elections are, and one day earlier in the week than what they have heretofore been by law : the sheriff and returning officers in each county in this state shall conduct themselves accordingly ; any law, usage, or custom to the contrary notwithstanding.

Time of holding the annual election.

(The generality of this act has been greatly abridged by partial provisions, in private acts.)

CHAP. 308.

An act to amend an act, entitled, an act concerning proving of wills and granting letters of administration, and to prevent frauds in the management of intestates' estates. (See 1715, c. 10.)

WHEREAS by the act, entitled, an act concerning proving of wills and granting letters of administration, and to prevent frauds in the management of intestates estates, the method of proceeding hath not been defined with sufficient precision, whereby great irregularities have crept into practice, and complaints have been made of precipitate and injurious decisions. For remedy whereof,

1. *Be it enacted, &c.* That all wills shall be proved and administrations granted in the court of the county (a) where the intestator or intestate had his usual residence at the time of his death, or in case he or she had fixed places of residence in more than one county, in either or

Place & manner of proving wills, &c.

a [See 1777, c. 115, s. 57.]

any of the said counties ; and in case of a written will, with the witnesses thereto, the same shall be proved by at least one of the subscribing witnesses, if living, but if contested (a) shall be proved by all the living witnesses, if to be found, and by such other persons as may be produced to support such will ; and where the validity of any last will or testament, whether written or nuncupative, shall be contested, the same shall be invariably tried by a jury, on an issue made up under the direction of the court for that purpose ; any usage or law to the contrary notwithstanding.

a [See 1784, c 225, s. 6.]

Validity of a will to be tried by a jury.

Executors, &c. to deliver the residue of the deceased's estate after two years to the legatees or representatives, they giving bond, &c. to refund, if necessary.

2. And whereas creditors have been greatly delayed in recovering their just debts, and executors and administrators put to great difficulty in the settlement of estates : *Be it enacted*, That from and after the passing of this act, no executor or administrator shall hereafter take, hold, or retain in his hands, more of the deceased's estate than amounts to his necessary charges and disbursements, and such debts as he shall legally pay within two years after administration granted : but that all such estates so remaining, shall, immediately after the expiration of two years, be divided, delivered and paid over to such person or persons, to whom the same may be due by law, or the will of the deceased, such person or persons, or some other for them, giving bond with two or more able sureties, that if any debt or debts truly owing by the deceased, shall be afterwards sued for and recovered, or otherwise duly made appear, that then and in every such case, he or they shall respectively refund and pay each his or her rateable part of that debt or debts, out of the part or share so as aforesaid allotted to him or her ; and such bond so taken shall be made payable to the chairman of the county court for the time being, and his successors ; which said bond shall be and enure to the sole use and advantage of the creditors, and such creditor or creditors shall and may have a scire facias in manner herein after directed, against the obligors in the said bond, as if the said bond had been drawn and delivered to such creditor or creditors.

The bond to be for the use of the creditors, who may have a scire facias against the obligors.

Bond to be bro't into court, &c. and lodged among the records of the court.

4. *And be it further enacted*, That the bonds so taken by executors or administrators from legatees, or persons entitled to a distributive share of the estate on an intestate, shall by such executor or administrator be brought into court at the next succeeding court after such bonds are so taken, and a record shall be made thereof, and the

bonds then lodged in the office of the said court with the records of the court : (a) And in all suits where the executors or administrators of any deceased person shall plead fully administered, no assets, or not sufficient assets to satisfy the plaintiff's demand, and such plea shall be found in favor of the defendant, the plaintiff may proceed to ascertain his demand and sign judgment, and on motion a writ or writs of scire facias shall and may issue, summoning such persons who have entered into bond as aforesaid, to shew cause why execution should not issue against them for the amount of such judgment ; and if there shall be judgment against the defendant or defendants to the scire facias, or any of them, execution shall and may issue thereon against the proper goods and chattels, lands and tenements of such defendant or defendants.

Proceedings upon a verdict that an executor, &c. hath fully administered, &c.
a [See 1791, c. 351, s. 5.]

Sci. fa. against the obligors.

4. And be it further enacted, That the creditors of any person or persons deceased, if he or they reside within this state, shall within two years, and if they reside without the limits of this state shall within three years, from the qualification of the executors and administrators, exhibit and make demand of their respective accounts, debts and claims of every kind whatever to such executors or administrators ; and if any creditor or creditors shall hereafter fail to demand and bring suit for the recovery of his, her or their debt, as above specified, within the aforesaid time limited, he, she or they shall forever be debarred from the recovery of his, her or their debt in any court of law and equity, or before any justice of the peace within this state. *Provided*, That nothing in this act shall extend to debar infants, persons *non compos* or *femes covert*, to bring their several actions after the expiration of the term above mentioned, provided such actions be brought within one year after the coming to lawful age, sound mind or discovery of such persons. *Provided also*, That if any creditor who after making demand of his debt or claim, shall delay to bring suit at the special request of the executors or administrators, that then and in that case the said debt or demand shall not be barred during the time of their indulgence.

Limitation of time for bringing suits against executors or administrators.

Savings for certain persons.

If delay registered, claim not barred.

5. And in order that all creditors may be duly apprised of the death of any person indebted to them : *Be it enacted*, That every executor or administrator shall within

Executors, &c. to advertise creditors.

two months after being qualified as executor or administrator, advertise at the court house of the county where the deceased usually dwelt at the time of his death, and other public places in said county, and at the district court-house at the next district superior court of law and equity held for the district in which such county may be, for all persons to bring their accounts and demands of every kind and denomination to the said executor or administrator agreeable to the directions of this act. (a)

6. *And be it further enacted*, That all laws and parts of laws that come within the purview and meaning of this act, are hereby declared void and of no effect.

a [See 1804, c. 666—1805, c. 685.]

Repealing clause.

CHAP. 309.

(See 1787, c. 274, and the acts there referred to.)

An act to amend and enlarge an act, passed at Tarborough, in the year one thousand seven hundred and eighty-seven, entitled, An act authorising and empowering the county courts of pleas and quarter-sessions to divide and appropriate the real estate of intestates.

WHEREAS the before mentioned act has provided an easy, equitable and speedy mode for dividing the real estates of intestates; and whereas it would tend greatly to the ease and convenience of all tenants in common to be included within the provisions of the said act. Therefore,

1. *Be it enacted, &c.* That it shall and may be lawful where real estates now are or hereafter may be held by two or more persons as tenants in common, they shall and may have the same liberty and privilege of having their said estates divided, as is provided by the said act for dividing the estates of intestates; and the divisions when made shall be good and effectual in law to bind the parties, their heirs and assigns.

Manner in which estates held in common may be divided.

CHAP. 310.

An act to add part of Bladen county to Cumberland.

WHEREAS it hath been represented and made appear to this general assembly, that the upper part of Bladen county is contiguous to the county court of Cumberland and superior court of Fayetteville district, and very remote from the court-house of the said county of Bla-

den and the district court thereof, to the great injury and inconvenience of the inhabitants of the upper part of the said county of Bladen: For remedy whereof,

1. *Be it enacted, &c.* That all that part of Bladen county, lying to the north-west of a line beginning directly opposite to the mouth of Willis's creek, on the north-east side of Cape-Fear river, thence a direct course to John Pharis's, on South river, so as to include said Pharis's in Cumberland county, thence the same direction until it strikes the Sampson line, then beginning at the said first station opposite to said Willis's creek, and running south seventy-five west to Robeson county line, be and is hereby annexed to the county of Cumberland, and from and after the passing of this act shall be and remain a part thereof.

Part of Bladen added to Cumberland.

CHAP. 311.

An act to amend an act, entitled, an act directing the mode of proceeding against the real estate of deceased debtors, where the personal estate is insufficient for the payment of the debts. (a)

a [1784, c. 226.]

WHEREAS no mode of proceeding is directed by the said act for the administrator to recover against the heirs, and debts that may be due and owing to him from the intestate, when the personal estate is insufficient to discharge such debt:

1. *Be it enacted, &c.* That in all cases where administration shall be granted to any person on account of his being a creditor of the intestate, and there shall not be personal assets sufficient to satisfy the debts or demand of such administrator, it shall and may be lawful for such administrator (b) to prefer a petition against the heir or heirs of such intestate, for the recovery of such debt or demand, to the court of the county wherein such administration was granted, or to the court of equity of the said district in which said county may be, (c) in the manner and under the regulations prescribed by an act, entitled, an act for the better care of orphans, and security and management of their estates, passed in the year one thousand seven hundred and sixty-two, (d) therein specially setting forth the nature of said debt or demand, and the amount thereof, and praying that the heir or heirs of such intestates may be made defendant or defendants thereto; and such petition being filed in the clerk's office,

Administrators, when creditors of intestates, may sue the heir and recover against the real estate.
b [Or executor, see 1806, c. 704.]

Manner of proceeding.
c [See 1806, c. 693.]

d [Chap. 5.]

the same proceedings shall be had thereon, and the defendant or defendants shall be bound and subject to the same rules as in case of petition under said act, and if a decree shall be made against such heir or heirs, or any of them, execution shall and may issue against the real estate of the deceased debtors in the possession of such heir against whom a decree shall be given as aforesaid.

Devisees of lands void, as to creditors, &c.

2. Whereas it is not just that by the practice or contrivance of any debtors, their creditors should be defrauded of their just debts: and whereas it is reasonable that the devisee or devisees of such debtors should be liable to suit for the debts of the testator, in like manner as heirs at law for the debts of their ancestor: wherefore, *Be it enacted*, That all devisees of lands, tenements and hereditaments, or of any rent, profit, term or charge out of the same, shall be deemed and taken only as against such creditor or creditors, his, her, and their heirs, successors, executors, administrators and assigns, and every of them, as null and void; and every such creditor shall and may have and maintain his, her or their action or actions against such devisee or devisees, in all case and in like manner as such action or actions might or could be brought or maintained against the heir or heirs at law of such deceased debtor, jointly with the heir or heirs at law, or severally by virtue of this act.

Action to be maintained against a devisee.

If an heir at law or devisee alien before action (and descended or devised) he is liable for the value.

3. *And be it further enacted*, That in all cases where any heir at law shall be liable to pay the debt of his or her ancestor, in regard of any lands, tenements or hereditaments, descending to him or her, or where any devisee shall be liable to pay the debt of a testator in regard of any lands devised to him or her, and shall sell, alien or make over the same before action brought or process sued out against him or her, that such heir at law or devisees shall be answerable for such debt or debts to the value of the said land so by him or her sold, aliened or made over; in which cases all creditors shall be preferred as in action against executors or administrators, and execution shall be taken out upon any judgment or decree obtained against such heir or devisee to the value of the said lands, as if the same were his or her own proper debt, saving that the lands, tenements and hereditaments *bona fide* aliened before the action brought, shall not be liable to such execution.

Creditors to be preferred as in actions against executors, &c.

How process to be served in case of a minor.

4. *Provided always*, *And be it further enacted*, That when any such heir or devisee shall be a minor, and have

a guardian; the leading process shall be served on such guardian; and where the minor shall have no guardian, then and in that case the court shall appoint a guardian to defend the suit for said minor.

5. *And be it further enacted,* That when any guardian shall have notice of any debt or demand against the estate of his or her ward, he or she may apply to the county court wherein such guardianship was granted, for an order to sell so much of the personal or real estate of such ward as may be sufficient to discharge such debt or demand; and such order of the court shall particularly specify what property may be so sold, and such property shall be sold on the same credit and under the same regulations as property sold by executors or administrators, is or may be by law; and the proceeds of such sales shall be considered as assets in the hands of the guardian for the benefit of the creditors, in like manner as assets in the hands of an administrator or executor, after scire facias, as by the act directed; and the same proceedings may be had against such guardian with respect to the assets aforesaid, as might be had or taken against an executor or administrator in similar cases. *Provided nevertheless,* That no execution shall be levied on the goods or chattels, lands or tenements, of any minor in the hands of his guardian, until twelve months after judgment obtained on the scire facias aforesaid; nor shall execution issue liable as aforesaid, at any time but on motion in open court.

Proceedings in case of a debt due from the estate of a minor.

When execution to issue.

CHAP. 312.

An act for the more easy redemption of mortgages.

See 1715, c. 7,
1812, c. 839.

WHEREAS mortgagees frequently bring actions of ejectment for the recovery of lands and estates to them mortgaged, and bring actions on bonds given by mortgagors to pay the money secured by such mortgages, and for performing the covenants therein contained, and likewise commence suit in the courts of equity to foreclose their mortgagors from redeeming their estates, and the courts of law where such ejectments are brought have not power to compel such mortgagees to accept the principal monies and interest due on such mortgages and costs, or to stay such mortgagees from proceeding to judgment and execution in such actions, but such mortgagors must have recourse to a court of equity for that purpose:

How mortgagors may discharge mortgages, &c. in case of action brought.

Courts' power to compel an assignment, &c. or a re-conveyance, &c.

Exceptions.

1. *Be it enacted, &c.* That from and after the passing of this act, where any action shall be brought on any bond for the payment of the money secured by such mortgage, or performance of the covenants therein contained, or where any action of ejectment shall be brought in any of the superior courts of law or courts of pleas and quarter-sessions in this state, by any mortgagee or mortgagees, his, her or their heirs, executors, administrators or assigns, for the recovery of the possession of any mortgaged lands, tenements or hereditaments, and no suit shall be then depending in any of the courts of equity in this state, or touching the foreclosing or redeeming of such mortgaged lands, tenements or hereditaments, and who shall appear and become defendant or defendants in such action, shall at any time pending such action pay unto such mortgagee or mortgagees, or in case of his, her or their refusal, shall bring into court where such action shall be depending all the principal monies and interest due on such mortgage, and also all such costs as have been expended in any suit or suits at law or equity upon such mortgage, such money for principal, interests and costs to be ascertained and computed by the court where such action is or shall be depending, or by the proper officer by such court to be appointed for that purpose, the monies so paid to such mortgagee or mortgagees, or brought into such court, shall be deemed and taken to be in full satisfaction and discharge of such mortgage; and the court shall and may discharge every such mortgagor or defendant of and from the same accordingly, and shall and may by rule or rules of the same court, compel such mortgagee or mortgagees, at the cost and charges of such mortgagor or mortgagors, to assign, surrender or reconvey such mortgaged lands, tenements and hereditaments, and such estate and interest as such mortgagee or mortgagees have or hath therein; and deliver up all deeds, evidences and writings in his, her or their custody, relating to the title of such mortgaged lands, tenements and hereditaments, unto such mortgagor or mortgagors who shall have paid or brought such monies into the court, his, her or their heirs, executors or administrators, or to such other person or persons as he, she or they shall for that purpose nominate or appoint.

2. *Provided always,* That this act, or any thing herein contained, shall not extend to any case where the person or persons against whom the redemption is or shall be prayed shall, by writing under his, her or their hands, or

the hand of his, her or their attorney, agent or solicitor, to be delivered before the money shall be brought into such court at law to the attorney or solicitor for the other side, insist either that the party praying a redemption has not a right to redeem, or that the premises are chargeable with other or different principal sums than what appear on the face of the mortgage, or shall be admitted on the other side; nor to any case where the right of redemption to the mortgaged lands and premises in question in any case or suit, shall be controverted or questioned by or between different defendants in the same cause or suit; nor shall be any prejudice to any subsequent mortgagee or mortgagees or subsequent incumbrancer; any thing in this act contained to the contrary thereof in any wise notwithstanding.

Denial of right to redeem.

Premises chargeable with other sums.

Right of redemption controverted.

Subsequent mortgages, &c. not to be prejudiced.

CHAP. 313.

An act to annex part of Burke county to the county of Wilkes.

WHEREAS it is represented to this general assembly that a part of Burke county, known by the name of Little-River Settlement, is of much greater distance from the court-house in said county, than from the court-house in Wilkes, the inhabitants are under necessary inconveniences: For remedy whereof,

1. *Be it enacted, &c.* That after the passing of this act, all that part of Burke county that lies north of the following line, be and the same is hereby annexed to the county of Wilkes; and that the said county line be established as follows, *to wit*, Beginning on Iredell county line at the Whetstone Hill on the Spring road, and running up said road to the lower Little-River, thence up said river to Holmes's creek, thence up said creek to Lambert's fork, thence up said fork to the head thereof, then a north course to the top of the Brushy mountain, being Wilkes line.

Part of Burke added to Wilkes county.

CHAP. 314.

An act directing the manner of issuing process in sundry cases arising in the courts of law and courts of equity, to direct the manner of proceeding on assigned or indorsed bills, bonds and notes under seal, to direct how joint obligations shall survive; and to repeal an act for calling forth the militia to assist in executing civil process, and to prevent abatements and discontinuances in certain cases.

WHEREAS the present mode of issuing writs and other process for the appearance to the superior courts, where there are two or more defendants who reside in different counties, is frequently productive of great delay and expense: To prevent which in future,

Manner of issuing writs, &c. where there are two defendants in any superior court or court of equity.

1. *Be it enacted, &c.* That from and after the passing of this act, it shall and may be lawful in all cases where there are two or more defendants, for the plaintiff, in any suit in the superior courts of law or courts of equity, to issue writs or subpœnas as the case may be, directed to the sheriff or coroner of each of the counties where the defendants are most likely to be found, noting on each process that they are issued in the same suit, and when the same are returned they shall be docketed in the same manner as if only one had issued. And in case any defendant or defendants should not be served with such process, the same proceedings shall be had as in cases of other similar process which has not been executed.

In any county court.

2. *And be it further enacted,* That when two or more persons are joined in one action in any of the county courts of pleas and quarter-sessions in this state, and one of them shall be personally served with a process in the county from whence the writ issued, and the other or others shall reside in some other county or counties in this state, then and in that case it shall and may be lawful for process to issue to the county or counties where the other defendant or defendants reside, returnable to the court of the county from whence the same issued, any law to the contrary notwithstanding.

Indorsee of a sealed bill, &c. may bring an action of debt in his own name.

α [See 1786, c. 248, s. 1.]

3. And whereas by an act of the general assembly, passed at Fayetteville, in the year one thousand seven hundred and eighty-six, entitled, An act to make the securities therein named negotiable, (a) indorsees and assignees of bills, bonds and notes with seal, are directed to bring actions on the case on the same; which is inconsistent with the nature of such securities, and frequently proves injurious to indorsees and assignees of such bills, bonds and notes: For remedy whereof, *Be it*

enacted, That from and after the passing of this act, the indorsee or assignee of any bill, bond or note under seal, may have and maintain an action of debt on the same, in his or her own name as indorsee or assignee, provided the original obligee could have maintained an action of debt on the same bill, bond or note with seal; any law, custom or usage to the contrary notwithstanding.

4. And whereas it is a rule of common law, that in case of the death of a joint obligor, the debt can never survive against his heirs, executors or administrators, which rule frequently is injurious and oppressive to the surviving obligor or obligors: To remedy which, *Be it enacted*, That from and after the passing of this act, in case of the death of one or more joint obligor or obligors, the joint debt or contract shall and may survive against the heirs, executors and administrators of the deceased obligor or obligors, as well as against the survivor or survivors; (a) and when all the obligors shall die, the debt or contract shall survive against the heirs, executors and administrators of all the said joint obligors; and in all cases of joint obligations, or assumptions of copartners or others, entered into after the passing of this act, suits may be brought and prosecuted on the same, in the same manner as if such obligations or assumptions were joint and several, (b) any law, custom or usage to the contrary notwithstanding.

Debt shall survive against heirs, &c. of a deceased obligor, as well as the survivors.

[See 1797, c. 475.]

a [See 1785, c. 253, s. 1; 1797, c. 475.]

Suits to be prosecuted on joint obligations hereafter entered into as if joint and several.

5. And whereas by the law now in force in this state, defendants to suits in equity cannot be held to bail without a special order from one of the judges for that purpose; which order can seldom be obtained, except in term time, without great delay and trouble: Therefore, *Be it further enacted*, That in all cases where the plaintiff or complainant in equity, shall specially state his debt or damages, and make oath or affirmation to the same, before the clerk and master in equity, it shall and may be lawful for the said clerk and master in equity to require the defendant or defendants to be held to bail, in the same manner as if the same had been by order of one of the judges of the superior courts of law and courts of equity.

Defendant to be held to bail in the court of equity, upon oath before the clerk and master.

6. *And be it further enacted*, That where a term of the superior court of law or the court of equity, or a

No abatement of suit where a term intervenes

b [See 1817, c. 937.]

between the death of a party and the qualification of the executor or administrator.

session of the court of pleas and quarter-sessions, shall intervene between the death of any plaintiff or defendant and qualification of the executors or administrator of such deceased plaintiff or defendant, the intervention of such term or session shall not work any abatement or discontinuance of such suit; any law or usage to the contrary notwithstanding.

CHAP. 315.

An act to amend an act, passed at Newbern, in November, one thousand seven hundred and eighty-four, entitled, an act to explain, amend and supply the deficiencies of an act passed at Hillsborough, entitled, an act to regulate the descent of real estates, to do away entails, to make provision for widows, and to prevent frauds in the execution of last wills and testaments; and for directing how deeds of gift and bills of sales of slaves shall be executed, authenticated and perpetuated. (a)

α[See 1784, c. 225, s. 7.]

WHEREAS in the seventh section of the above recited act it is required that all bills of sale for negroes, and deeds of gift of any estate of whatever nature, shall within nine months after the making thereof be proved in due form and recorded; and all bills of sale and deeds of gift, not authenticated and perpetuated in manner by the said act directed, shall be void, and of no force whatever: And whereas it appears to this general assembly, that by unavoidable accidents many counties in this state did not receive the laws in time for a number of the good citizens of this state to avail themselves of the benefit of the said act, whereby many are likely to sustain great damage: For remedy whereof,

Further time allowed for probate, &c. of bills of sale, &c.
(See 1791, c. 348, s. 1.)

1. *Be it enacted, &c.* That all bills of sale taken and deeds of gift made, and not already recorded in manner required by the before mentioned act, shall have a further time of twelve months allowed for probate and registration; and shall when thus authenticated and perpetuated, be held and deemed as valid in law, to all intents and purposes, as if they had been proved and registered within the time required by the aforesaid recited act; any law, usage or custom to the contrary notwithstanding.

Hereafter to be proved, &c. within twelve months.

2. *And be it further enacted,* That hereafter all bills of sale of negroes, and deeds of gifts of any estate of whatever nature, shall within twelve months after the making thereof be proved in due form and recorded: also all bills of sale and deeds of gift, not authenticated

in manner by this act directed, shall be void and of no force whatsoever; any law to the contrary notwithstanding.

CHAP. 316.

An act allowing a longer time for surveying lands entered in the office kept by John Armstrong, military warrants and pre-emption rights.

1. *Be it enacted, &c.* That a further time of three years shall be allowed for surveying all lands entered in the office of the said John Armstrong, all military warrants issued by the secretary of the state, and all pre-emption rights in the district of Mero; any law, usage or custom to the contrary.

Further time allowed for surveying lands.

Read three times and ratified in General Assembly, 2
the 22d day of December, Anno Dom. 1789. S

SIGNED BY

CHARLES JOHNSON, S. S.

STEPHEN CABARRUS, S. C.

At a general assembly begun and held at Fayetteville, on the first day of November, in the year of our Lord one thousand seven hundred and ninety, and in the fifteenth year of the independence of the said state: Being the first session of the said assembly. Alexander Martin, esq. governor.

CHAP. 317.

An act to cede and vest in the United States of America, the lands therein mentioned, for the purpose of building light-houses.

WHEREAS William Williams, John Williams, Joseph Williams, William Howard, junior, and Henry Gerish, of Carteret county, planters, have by deed bearing date the thirteenth day of September, in the year one thousand seven hundred and ninety, conveyed to the governor of this state and his successors in office, for the use of the state, to erect a light-house thereon, one acre of land on Oacock island, to be chosen out of their several unimproved lands situated on the said island, by commissioners appointed by an act of assembly passed at Fayetteville, in the year aforesaid, as by reference to the said deed and act had may more fully appear. And whereas Benjamin Smith, of Brunswick county, esquire.

hath executed a deed to the person therein named, for the use of the state and the security of the navigation of Cape-Fear, for ten acres of land situated on the Cape-Island, for the purpose of erecting thereon a light-house, under the condition and limitations in said deed contained and expressed, by an act of assembly passed at Fayetteville, in the year one thousand seven hundred and eighty-nine, as by the same reference being thereto had, may more fully appear. And whereas the funds heretofore appropriated by this state to the erecting and finishing light-houses, are now vested in the congress of the United States, wherein the establishment and support of light-houses is placed by the constitution and laws thereof,

Certain lands
vested in the
U. States.

1. *Be it therefore enacted, &c.* from and after the passing of this act, the lands as aforesaid, with their appurtenances, and the jurisdiction of the same, shall be ceded and vested in the United States, under the condition herein after expressed.

Governor to ex-
ecute a deed.

2. *And be it further enacted,* That the governor of this state is hereby empowered and required, forthwith to execute a deeds or deeds, on the part and behalf of this state, to the United States, of all right, title and claim which this state hath to the lands as aforesaid, with their appurtenances, under the several acts of assembly, and deeds herein before recited and mentioned.

CHAP. 318.

An act to amend an act, entitled, An act for establishing courts of law, and regulating the proceedings therein, (a) and another act, entitled an act for giving an equity jurisdiction to the superior courts. (b)

a [1777, c. 115.]

b [1782, c. 177.]

1. *Be it enacted, &c.* That one other person, being a man of abilities, integrity, and learned in the law, shall be appointed solicitor-general for the state, who shall have the same powers, and be under the same restrictions, and have the same allowances and fees (c) as the attorney-general of this state.

Solicitor general
to be ap-
pointed.
His powers, &c.

c [For fees,
see 1818, c. 973.]

2. *And be it further enacted,* That no summons, writ, declaration, return, process, judgment or other proceedings in the civil causes in any court of record, shall be abated, arrested, quashed or reversed for any defect or want of form, but the said courts respectively shall proceed and give judgment accordingly, as the right of the

Proceedings
not to abate for
want of form.

cause and matter in law shall appear unto them, without regarding any imperfections, defects or want of form in such writ, declaration or other pleading, return, process, judgment or course of proceeding whatsoever, except those only in cases of demurrer, which the party demurring shall specially set down and express, together with his demurrer as the cause thereof. And the said courts respectively shall and may by virtue of this act, from time to time, amend all and every such imperfections, defects and want of form, other than those only which the party demurring shall set down as aforesaid, and may at any time permit either of the parties to amend any thing in the process or pleadings, upon such conditions as the said courts respectively shall in their discretion and by their rules prescribe.

Exempt in case of demurrer, &c.

3. *And be it further enacted*, That so much of the two acts mentioned in the title of this act, and so much of every other act as comes within the purview of this act, shall be and is hereby repealed and made void.

Repealing clause.

CHAP. 319.

An act to prevent any person who now does, or who may hereafter, hold any office, appointment or authority under the federal government, from being eligible to a seat in the general assembly of this State, and to prevent any person from holding or exercising any office or appointment under the authority of the said state, so long as they continue to hold or exercise any office or appointment under the authority of the United States.

(See 1792, c. 366—1796, c. 450—1811, c. 811.)

WHEREAS in consequence of the adoption of the constitution or form of government of the United States by this state, sound policy dictates the measure of keeping separate and distinct the officers acting under the authority of the United States, from acting in any legislative, executive, judiciary, or other situation under the authority of this state:

1. *Be it therefore enacted, &c.* That from and after the passing of this act, no person whatever shall be eligible to a seat in the general assembly of this state, who at the time of election to such seat, or at the time of taking the same, shall have or hold any office of trust, profit or emolument, under or by the appointment of the United States, or any officer thereof.

Officers of the United States not eligible to a seat in the general assembly.

2. And whereas it is necessary to keep separate and distinct the offices of the federal government from those

Citizens not to hold an office under the

United States
and this state at
the same time.

a [Amended
see 1811, c.
811.]

Senators and re-
presentatives of
this state in con-
gress included,
&c.

b [Amended see
1796, c 450, s.
2, & 1793, c.
393.]

of the state government: *Be it further enacted*, That no citizen of this state, shall hold at one and the same time, any office of trust, profit or emolument under the authority of the United States, and any office or authority either civil, military, judiciary, or otherwise, under the authority of this state. (a)

3. *And be it further enacted*, That the senators of this state to the United States, and the representatives of this state to the United States, shall be considered as coming within the meaning and purview of this law, and shall be excluded from all state offices as aforesaid. (b) And any person accepting any such appointment under the authority of the United States, and holding any office or appointment under the authority of this state, the said state appointment is hereby declared to be vacant.

CHAP. 320.

See act of 1783, c. 194, and the acts there referred to. An act to alter and amend the acts for regulating the pilotage and facilitating the navigation of Cape-Fear river.

Where vessels
are lightened,
&c pilotage to
be reckoned on
the greatest
draught of wa-
ter.

1. For preventing disputes relative to the river pilotage, when vessels may be lightened or deepened in going down or coming up the river, *Be it enacted*, That if any vessel deepens or lightens between Wilmington and the flats, between the flats and Brunswick, or between Brunswick and Fort-Johnston, the pilot shall be paid for the greatest draught of water, and shall besides be entitled to demand at the rate of twelve shillings and six pence per day, for every day he may be delayed in loading or unloading such vessel, in which no fraction or part of a day shall be allowed or deducted.

Pilot boat to be
provided, & du-
ty of pilots.

.2 *And be it enacted*, That the said commissioners shall ordain and direct the pilots for the bar of the new inlet, under pain of removal from office, to provide in a certain convenient time at least one good decked pilot boat, sufficient to venture out and keep the sea in blowing and rough weather; any pilot of either of the bars of Cape-Fear river possessed of such sufficient boat, neglecting or refusing going out to the assistance of vessels off the coast or harbour when vessels in general can go out with safety, or who shall refuse or neglect in more moderate weather to go out to such vessels in whale-boats or other undecked boats, upon due proof being made thereof before the commissioners, shall be removed from being a branch pilot.

5. And that all pilots may be the better enabled to ascertain what vessels appear at a distance, with their several bearings, and to distinguish whether they have signals up for pilots, *It is hereby further enacted*, That each bar pilot shall, within such convenient time as the said commissioners shall direct, furnish himself with a good telescope or spy-glass, under such penalty as the commissioners shall think proper; and such spy-glass shall always be taken in the boat when the pilot goes out to sea.

Bar pilots to provide themselves with spy-glasses.

CHAP. 321.

An act to alter the mode of swearing petit jurors in the courts of law in this state.

WHEREAS the present method practised in the courts of law in this state of swearing the petit jury in every cause, in some measure retards the business in said courts, and such frequent use of oaths in a great measure destroys their solemnity:

1. *Be it therefore enacted, &c.* That from and after the first day of June next, the clerks of the respective courts of law shall, at the beginning of their courts, swear or cause to affirm such of the petit jury as are of the original pannel, well and truly to try all civil causes that shall come before them according to the evidence given thereon, and if there should not be enough of the original pannel, talismen shall take a similar oath or affirmation to try such causes as shall come before them during the day. *Provided always*, any thing herein contained, shall not be so construed as to prevent the usual challenges in law to the whole of the jury so sworn, or any of the said jurors, (a) and if by reason of such challenges any juror or jurors shall be withdrawn, his or their place on such jury shall and may be supplied by any of the original venire, or of the by-standers by law qualified to serve on any jury within this state, and further, that nothing herein contained shall be construed to alter the present method of swearing petit jurors on state trials, but the same shall continue in the usual form as heretofore practised.

Manner of swearing or affirming petit juries.

a [See 1796. c. 452—1801, c. 592—1812, c. 833.]

CHAP. 322.

An act to carry into effect a resolution of congress, passed the twentieth day of September, in the year one thousand seven hundred and eighty-nine.

WHEREAS it is recommended by the resolve of the first session of the congress of the United States to the legislatures of the several states, to pass laws making it expressly the duty of the keepers of their jails to receive and safe keep therein all prisoners committed under the authority of the United States, until they shall be discharged by the due course of the laws thereof, under the like penalties in the case of prisoners committed under the authority of such states respectively, the United States promising on their parts to pay for the use and keeping of such jails at the rate of fifty cents per month for each prisoner who shall be committed under their authority, during the time such prisoner shall be confined therein, and also to support such of said prisoners as shall be committed for offences: To carry the said resolve into effect,

Jailors to receive and keep prisoners of the United States.

1. *Be it enacted, &c.* That when any prisoner or prisoners shall be delivered to the keeper of any jail in this state by the authority of the United States, such keeper is hereby commanded to receive said prisoner or prisoners, and commit him or them accordingly. And all or every keeper or keepers of any jail in this state, refusing or neglecting to take possession of any prisoner or prisoners delivered to him or them, by the authority aforesaid, shall be subject to the same pains and penalties, as for neglect or refusal to commit any prisoner or prisoners delivered them under the authority of this state.

Maintenance of prisoners.

2. *Provided always,* The allowance for the maintenance of any prisoner or prisoners committed to any of the prisons of this state under the authority of the United States, shall be equivalent to the allowance made for prisoners committed under the authority of this state.

CHAP. 323.

An act to restrain all married persons from marrying again whilst their former wives or former husbands are living.

WHEREAS many evil-disposed persons, going from one part of our country to another, and into places where they are not known, do marry, having another husband

or wife still living, to the utter destruction of the peace and happiness of families :

1. *Be it enacted, &c.* That if any person now married, or who hereafter shall be married, doth take to him or herself another husband or wife, while his or her former wife or husband is still alive, every such offence shall be felony, and the person so offending shall suffer death as in cases of felony. (a) *Provided always,* That this act shall not extend to any person or persons whose husband or wife shall continually remain beyond sea for the space of seven years together, nor to any person or persons whose husband or wife shall absent him or herself in any other manner for the space of seven years together, such person or persons not knowing his or her said husband or wife to be living within that time.

Persons marrying in the lifetime of former husband or wife, deemed guilty of felony, &c.

a [Clergy taken away: see 1809, c. 783.]

2. *Provided also, and it is hereby enacted,* That this act shall not extend to any person or persons, who are or shall be at the time of such after-marriage divorced according to the mode established, or which hereafter shall be established by law, nor to any person or persons whose former marriage is declared by law to be void and of no effect, nor to any person or persons for or by reason of any former marriage had or made within the age of consent.

Not to extend to persons divorced by law, &c.

CHAP. 324.

An act to alter the mode of punishment for horse-stealing.

WHEREAS the present mode of punishment for horse-stealing is not attended with the salutary effects intended by the legislature;

1. *Be it therefore enacted, &c.* That from and after the first day of January next, if any person or persons within the limits of this state, shall feloniously steal any horse, mare or gelding, upon due conviction thereof, such felon or felons shall suffer death without benefit of clergy. (b)

Punishment for horse-stealing.

b [First offence clergyable by act of 1817, c. 934.]

CHAP. 325.

An act to repeal an act providing means for the payment of the domestic debt, for appropriating certain monies therein mentioned, and to amend an act passed the last general assembly, entitled, an act for levying a tax for the support of government and for the redemption of old paper currency, continental money, specie and other certificates, and also part of another act, entitled, an act for opening the land office for the redemption of specie and other certificates, and discharging the arrears due to the army.

Part of an act repealed.

Rates of entries of lands in the land-offices.

a [Altered, see 1794, c. 416 s. 1 —1818, c. 970.]

1. *Be it enacted, &c.* That so much of the act for opening the land-office, for the redemption of specie and other certificates, as requires any person entering lands within this state to pay at the rate of ten pounds for every hundred acres, in said certificates, is hereby repealed and made void; and that all persons hereafter entering lands in any of the land-offices of this state, shall pay at the rate of thirty shillings (*a*) state currency, or gold and silver at the rates established by law, for every hundred acres of land by him or her so entered.

CHAP. 326.

An act empowering the county courts of pleas and quarter sessions to direct the secretary of state to correct certain patents or grants therein described, when there have been errors by the surveyor in making the returns, or by the secretary in issuing the same.

WHEREAS frequent applications are made to the general assembly to pass laws to correct the errors in patents or grants as aforesaid, and it being necessary some rule should be established for correcting the same:

Errors in patents or grants, how to be rectified, &c.

1. *Be it therefore enacted, &c.* That whenever there has been or hereafter may be an error by the surveyor in platting or making out the certificate to the secretary's office, or the secretary shall mistake in making out the courses agreeable to the said returns, or shall misname the claimant or otherwise, so as such claimant shall be injured thereby, the claimant so injured shall prefer a petition to the county court of pleas and quarter sessions where such land is situated, setting forth the injury, he she or they might sustain in consequence of such error or mistake, with all and singular the matters and things relative thereto; and the said court is hereby authorised to hear testimony respecting the truth of the allegations set forth in the said petition, and if it shall appear to them by said testimony, or from the returns of the surveyor or error of the secretary, that the patent-

(See 1798, c. 584—1804, c. 655—1814, c. 187.)

tee of such lands is liable to be injured thereby, such court is hereby required to direct their clerk to certify such facts as appear to their satisfaction to the secretary of state, who shall file the same in his office, and correct such error in the patent, likewise on the records in his office: for which service he shall receive four shillings for each and every patent so altered as aforesaid, except where the error was committed by the secretary.

2. And whereas there are mistakes often made by the registers of the different counties within this state, in registering grants or mesne conveyances; *Be it enacted*, That any person who discovers there is an error in the registration of his, her or their grants or mesne conveyances, shall be at liberty to prefer a petition to the county court, in the same manner as in this act before directed, and on hearing the same, if it appears to the satisfaction of the court that error has been made, they are hereby directed and required to order the register of the county to correct such error so made, and make the records by him kept conformable to the grant, mesne conveyance, bill of sale, or other instrument of writing, in which it appears such mistake has been so made: *Provided*, That a majority of the acting justices of the said courts shall be present on the hearing of such petitions, and that such petitioner shall prove to the court that he has notified every person having lands adjoining those mentioned in the petition thirty days previous to preferring the same, and that he has notified every person who claims title to land described in his said petition: *And provided also*, That any person who may be dissatisfied with the judgment of any county court on his her or their petition, shall be at liberty to appeal to the superior court of the district as in other cases, and no petition shall be set for hearing the first term.

Errors in registration how to be corrected, &c.

3. *Provided always*, That where any person petitions for the alteration of a deed, mesne conveyance or bill of sale, the same notice shall be given to the grantor of such deed or mesne conveyance.

4. *And be it further enacted*, The clerks of the county courts where such petition shall be preferred shall receive the sum of five shillings for his services on each petition, and no more, to be paid by the party petitioning.

Clerks' fees.

5. *And be it further enacted*, That the county courts when they think necessary shall order the surveyor and five freeholders who are not interested, to examine and

County court may order lands to be surveyed, &c.

survey any disputed lands, to ascertain the lines, and to make return thereof to the said court on oath: *Provided*, That the expense of such examination and survey shall be paid by the party petitioning as aforesaid.

CHAP. 327.

An act for raising a revenue for the payment of the civil list and contingent charges of government, for the year one thousand seven hundred and ninety-one, and to repeal part of an act passed at Newbern, one thousand seven hundred and eighty-four, entitled, an act for raising a public revenue for the support of government, and to repeal an act, entitled, an act to suppress excessive gaming.

1. And whereas it hath frequently happened that persons have been permitted in this state to qualify and act as sheriffs, clerks, entry-takers and registers, without giving bond as required by law, for the due collecting and accounting for the public taxes and other monies which should become payable by them, to the great injury of the state, and detriment of its revenue: *Be it therefore enacted*, That henceforward it shall be the indispensable duty of the clerks of the county courts, and they and every of them are hereby strictly required, to make a record of and enter at large on their dockets, the names of those justices of the peace who shall be in court or on the bench at the time of the qualification of their sheriffs, clerks, entry-takers and registers; and if the said clerk shall fail or neglect to make such entry and record as aforesaid, and being thereof convicted in any superior court of the district in which the county shall be situated, he shall forfeit his office, as a punishment for such failure and neglect as aforesaid; which justices of the peace, in case of their failure to take the bonds by law required, shall be considered as being, and they are hereby declared to be, bound and liable, to all intents and purposes, as the securities of such sheriff, clerk, entry-taker or register, from whom they may have failed to take bonds, in as full and ample manner as though such bonds were taken, and they had actually been named therein, and had subscribed the same as his or their securities, and they and each of them shall be proceeded against accordingly by the treasurer and others concerned; in all which instances or suits, a copy of the record of the court, attested by the clerk, is hereby declared to be legal and sufficient evidence, shall be admitted as such, and judgment shall be had thereon accordingly.

Penalty on county clerks & justices neglecting to take bonds from sheriffs and others accountable for the public taxes.

(Amended by act 1809, c. 777—1816, c. 901.)

CHAP. 328.

An act to continue in force an act, passed at Fayetteville, in the year [See 1788, c. one thousand seven hundred and eighty-eight, entitled, an act for 391—1794, c. the relief of persons who have suffered or may suffer by their 409—1795, c. grants, deeds, mesne conveyances, and other instruments of writing 438.] not being proved or registered within the time heretofore appointed by law.

WHEREAS the before recited act will expire at the end of this session much to the injury of numbers of good citizens of this state: For remedy whereof,

1. *Be it enacted, &c.* That the before recited act and every part thereof, shall continue and be in full force for the term of two years longer, and from thence until the end of the next session of the general assembly. Former act continued.

CHAP. 329.

An act for altering the time of the annual meeting of the general assembly of this state.

WHEREAS it is found by experience to be highly inconvenient for the members of the general assembly to give their attendance on the first Monday in November annually:

Be it therefore enacted, &c. That the next annual meeting of the general assembly shall be on the first Monday in December, (a) one thousand seven hundred and ninety-one, and annually on the same day in each succeeding year; and that it shall and may be lawful for the first assembly, at their first annual meeting, to choose a governor and other officers of state, to succeed such as may be now chosen by the general assembly. Time of meeting of the general assembly. a [See 1795, c. 440.] When to choose governor.

CHAP. 330.

An act to authorise the constables to serve warrants and other process as therein directed, on rivers, bays or creeks, within the state.

WHEREAS it is enacted by the fifth section of an act passed at Newbern, in the year of our lord one thousand seven hundred and seventy-seven, entitled, "an act for appointing sheriffs, and directing their duty in office," (b) &c. That every sheriff, by himself or his lawful officers or deputies, shall from time to time execute all writs and other process to him legally issued and directed within his county, or upon any bay, river or creek ad- b [1777, c. 118,]

joining thereto, and make due return thereof; but no direction is given therein as to constables :

Constables may serve warrants, &c. on bays, &c.

a [Penalty for not serving process, 1741, c. 24, s. 8.]

1. *Be it therefore enacted, &c.* That from and after the passing of this act, it shall and may be lawful for any constable or constables in this state to serve in like manner upon any bay, river, or creek adjoining their counties, and to return to the magistrate or magistrates of their respective counties, all process usually executed by such officer or officers. (*a*)

CHAP. 331.

[See act 1784, c. 227.]

An act to amend an act, entitled, An act to empower the county courts of pleas and quarter-sessions of the several counties in this state to order the laying out public roads, and to establish and settle ferries, and to appoint where bridges shall be built, and to clear inland navigation.

Majority of justices necessary to lay county taxes.

1. *Be it enacted, &c.* That from and after the passing of this act, it shall not be lawful for any of the county courts in this state to lay a tax for the repairing public buildings, building of bridges, or any other county tax, or make any allowances for extra services to their clerk or sheriff, or allow any other claim against the county, unless a majority of the acting justices belonging to such county shall be present.

May order the clearing out inland rivers, &c.
[See 1784, c. 227, s. 16.]

2. *And be it further enacted,* That it shall and may be lawful, after the passing of this act, and the county courts are hereby authorised and empowered to order the inhabitants of their respective counties to clear out inland rivers and creeks for the passage of boats, where a majority of the justices of said courts shall think it necessary, and to appoint hands and overseers to carry their orders into effect.

And appoint public landings.
[See 1784, c. 227, s. 16.]

3. *And be it further enacted,* That it shall and may be lawful, and the said county courts are hereby authorised and empowered, to appoint such public landings in their respective counties, as they may think necessary.

CHAP. 332.

An act for cutting a navigable canal from the waters of Pasquotank river, in this state, to the waters of Elizabeth river, in the state of Virginia.

WHEREAS the cutting of a navigable canal from the waters of Pasquotank river in this state, to the waters of Elizabeth river in the state of Virginia, will be of great public utility, and many persons are willing to subscribe large sums of money to effect such a beneficial work, and it is just and proper that they, their heirs and assigns, should be empowered to receive reasonable tolls forever, in satisfaction for the money advanced by them in carrying the work into execution and the risque they run: Therefore,

1. *Be it enacted, &c.* That it shall and may be lawful to open books in the counties of Rockingham and Granville, and the towns of Halifax, Murfreesborough, Edenton, Windsor and Nixonton, under the management of James Gallaway in Rockingham, Robert Burton in Granville, Allen Jones in the town of Halifax, Hardy Murfree in the town of Murfreesborough, John Hamilton in the town of Edenton, Zedekiah Stone in the town of Windsor, and Thomas Harvey in the town of Nixonton; and under the management of such persons and at such places in Virginia, as shall be appointed by that state, for receiving and entering subscriptions to the amount of eighty thousand dollass for the said undertaking, which subscriptions shall be made personally or by power of attorney, and shall be in Spanish milled dollars, but may be paid in other silver or gold coin of the same value. That the said books shall be opened for receiving subscriptions on the first day of May next, and continue open until the first day of September next inclusive: and on the nineteenth day of the said month of September, there shall be a general meeting of the subscribers at Halifax, in the state of North-Carolina, of which meeting notice shall be given by the said managers, or any three of them, in the gazettes of both the aforesaid states at least one month next before the said meeting. And such meeting shall and may be continued from day to day until the business is finished. And the acting managers shall, at the time and place aforesaid, lay before such of the subscribers as shall meet, according to the said notice, the books by them respectively kept, containing the state of the said subscriptions, and

Books to be opened for taking subscriptions, &c.

When and how long to be opened.

Meeting of subscribers and proceedings thereon.

if one-half of the capital sum aforesaid should on examination appear not to have been subscribed, then the said managers are empowered to take and receive subscriptions to make up the deficiency. And a just and true list of all the subscribers, with the sums subscribed by each, shall be made out and returned by the said managers, or any four or more of them, under their hands, into the superior court of the district of Edenton, and into such court as the state of Virginia shall direct, to be there recorded. And in case more than eighty thousand dollars shall be subscribed, then the same shall be reduced to that sum by the said managers, or a majority of them, by beginning at and striking off from the largest subscription or subscriptions, and continuing to strike off a share from all subscriptions under the largest and above one share, until the sum is reduced to the capital aforesaid of eighty thousand dollars, or until a share is taken from all subscriptions above one share, and lots shall be drawn between subscribers of equal sums to determine the number in which said subscribers shall stand on a list to be made for striking off as aforesaid, and if the sum subscribed still exceeds the capital aforesaid, then they shall strike off by the same rule until the sum subscribed is reduced to the capital aforesaid, or all the subscribers are reduced to one share, and if there still be an excess, then lots shall be drawn to determine the subscribers who are to be excluded to reduce the subscriptions to the capital aforesaid, which striking off shall be certified in the list aforesaid. And the said capital sum shall be reckoned and divided into three hundred and twenty shares of two hundred and fifty dollars each, of which every person subscribing may take and subscribe for one or more whole shares, and not otherwise. *Provided*, That unless one-half of the said capital shall be subscribed, all subscriptions made in consequence of this act shall be void; and in case one-half and less than the whole of the said capital shall be subscribed as aforesaid, then the president and directors are hereby empowered and directed to take and receive the subscriptions which shall be first offered, in whole shares as aforesaid, until the deficiency shall be made up, a certificate of which additional subscriptions shall be made under the hands of the president and directors, or a majority of them, for the time being, and returned to and recorded in the courts aforesaid.

2. *And be it enacted*, That in case one-half of the said

capital or a greater sum shall be subscribed as aforesaid, the said subscribers and their heirs and assigns, from the time of the said first meeting, shall be and are hereby declared to be incorporated into a company by the name of the Dismal Swamp Canal Company, and may sue and be sued as such, and such of the said subscribers as shall be present at the said meeting, or a majority of them, are hereby empowered and required to elect a president and four directors for conducting the said undertaking, and managing all the said company's business and concerns, for and during such time, not exceeding three years, as the said subscribers or a majority of them shall think fit; and in counting the votes of all general meetings of the said company, each member shall be allowed one vote for every share as far as ten shares, and one vote for every five shares above ten, by him or her held at the time in the said company; and any proprietor by writing, under his or her hand, executed before two witnesses, may depute any other member or proprietor to vote and act as proxy for him or her at any general meeting.

To be incorporated, to choose a president, &c.

S. *And be it enacted*, That the said president and directors so elected, and their successors, or a majority of them assembled, shall have power and authority to agree with any person or persons, on behalf of the said company, to cut the said canal, and to erect such locks and perform such other works as they shall judge necessary, for the navigation of the said canal, and carrying on the same, from place to place, and from time to time, and upon such terms and in such manner as they shall think fit; and out of the money arising from the subscriptions and tolls, and other aids hereafter in this act given, to pay for the same and to repair and keep in order the said canals, locks and other works necessary thereto, and to defray all incidental charges; and also to appoint a treasurer, clerk, and such other officers, toll-gatherers, managers and servants as they shall judge requisite, and to agree for and settle their respective wages or allowances, and settle, pass and sign their accounts; and also to make and establish rules of proceeding, and transact all the other business and concerns of the said company in and during the intervals between the general meetings of the same; and they shall be allowed as a satisfaction for their trouble therein such sum of money as shall by a general meeting of the subscribers be determined,

Powers granted to president, &c.

Provided always, that the treasurer shall give bond in such penalty and with such security as the said president and directors, or a majority of them, shall direct, for the true and faithful discharge of the trust reposed in him; and that the allowance to be made to him for his services shall not exceed three pounds in the hundred for the disbursements by him made; and that no officer in the said company shall have a vote in the settlement or passing his own account.

Subscription
money how to
be paid, &c.

4. *And be it enacted*, That the said president and directors, and their successors, or a majority of them, shall have full power and authority, from time to time, as money shall be wanting, to make and sign orders for that purpose, and direct at what time and in what proportion the proprietors shall advance and pay off the sums subscribed, which orders shall be advertised at least one month in the Virginia and North-Carolina gazettes; and they are hereby authorised and empowered to demand and receive of the several proprietors, from time to time, the sums of money so ordered to be advanced for the carrying on and executing, or repairing and keeping in order the said works, until the sums subscribed shall be fully paid, and to order the said sums to be deposited in the hands of the treasurer, to be by him disbursed and laid out as the said president and directors, or a majority of them, shall order and direct; and if any of the said proprietors shall refuse or neglect to pay their said proportions within one month after the same is so ordered and advertised as aforesaid, the said president and directors, or a majority of them, may sell at auction, and convey to the purchaser the share or shares of such proprietor so refusing or neglecting payment, giving at least one month's notice of the sale in the Virginia and North-Carolina gazettes, and after retaining the sum due and charges of sale out of the money produced thereby, they shall refund and pay the overplus, if any, to the former owners; and if such sale shall not produce the full sum ordered and directed to be advanced as aforesaid, with the incidental charges, the said president and directors, or a majority of them, may in the name of the company, sue and recover the balance by motion on ten days previous notice; and the said purchaser or purchasers shall be subject to the same rules and regulations as if the said sale and conveyance had been made by the original proprietor.

5. And to continue the succession of the said president and directors, and to keep up the same number: *Be it enacted*, That from time to time, on the expiration of the term for which the said president and directors were appointed, the proprietors of the said company at the next general meeting, shall either continue the said president and directors, or any of them, or shall choose others in their stead; and in case of the death, removal, resignation or incapacity of the president or any of the directors, may and shall, in manner aforesaid, elect any other person or persons to be president and directors in the room of him or them so dying, removing, resigning or becoming incapable of acting, and may at any of their general meetings remove the president or any of the directors, and appoint others for and during the remainder of the term for which such person or persons were at first to have acted.

Succession of president, &c. how kept up.

6. *And be it enacted*, That every president and director, before he acts as such, shall take an oath or affirmation for the due execution of his office.

President, &c. to take an oath.

7. *And be it enacted*, That the presence of proprietors having one hundred and eighty shares at least, shall be necessary to constitute a general meeting; and that there be a general meeting of proprietors on the first Monday in September in every year, (a) at such convenient town as shall from time to time be appointed by the said general meeting, but if a sufficient number should not attend on that day, the proprietors who do attend may adjourn such meeting, from day to day, till a general meeting of proprietors shall be had, which may be continued from day to day until the business of the company is finished; to which meeting the president and directors shall make report, and render distinct and just accounts of all their proceedings; and on finding them fairly and justly stated, the proprietors then present, or a majority of them shall give a certificate thereof, a duplicate of which shall be entered on the said company's books; and at such yearly general meetings, after leaving in the hands of the treasurer such sum as the proprietors, or a majority of them, shall judge necessary for repairs and contingent charges, an equal dividend of all the net profits arising from the tolls hereby granted, shall be ordered and made to the proprietors of the said company in proportion to their several shares; and on any emergency in the interval between the said yearly meetings, the president, or a

Shares necessary to constitute a general meeting, and proceedings thereon.

a [See 1797, c. 479.]

majority of the directors, may appoint a general meeting of the proprietors of the company, at any convenient town, giving at least one month's previous notice in the Virginia and North-Carolina gazettes, which meeting may be adjourned and continued as aforesaid.

Canals, &c. vested in proprietors, and to be exempt from taxes, &c.

Rates of toll.

α [See 1792, c. 373—1799, c. 534.]

Manner of obtaining payment.

8. *And be it further enacted*, That for and in consideration of the expenses the said proprietors will be at, not only in cutting the said canal, erecting locks, making causeways, and performing other works necessary for this navigation, but in maintaining and keeping the same in repair, the said canals, locks, causeways, and other works, with all their profits, shall be and the same are hereby vested in the said proprietors, their heirs and assigns forever, as tenants in common, in proportion to their respective shares; and the same shall be deemed real estate and be forever exempt from the payment of any tax, imposition or assessment whatsoever; and it shall and may be lawful for the said president and directors at all times forever hereafter, to demand and receive at some convenient place near one of the extremities of the canal, for all commodities transported through it, or over the causeways, tolls according to the following table and rates, which shall be in Spanish milled dollars, *to wit*, (a)

All produce, goods, wares or merchandize passing the causeways, shall be subject to the same toll as goods passing through the canal: but which tolls, though chargeable in Spanish milled dollars, may be paid in other silver, or in gold coin of the same value. And in case of refusal to pay the tolls at the time of offering to pass the place aforesaid, and previous to passing the same, the collector of the said tolls may lawfully refuse passage to whatever refuses payment, and if any vessel, wagon or cart shall pass without paying the toll, then the said collector may seize such vessel, wagon or cart wherever found, and sell the same at auction for ready money; which so far as is necessary shall be applied towards paying the said toll, and all expenses of seizure and sale, and the balance if any shall be paid to the owner; and the person having the direction of such vessel, wagon or cart, shall be liable for such toll, if the same is not paid by the sale aforesaid. *Provided*, That the said proprietors, or a majority of them, holding at least one hundred and eighty shares, shall have full power and authority, at any general meeting, to lessen the said tolls or any of

Toll may be lessened, &c.

them, or to determine that any article may pass free of toll.

9. *And be it enacted*, That the said Canal and works to be erected thereon in virtue of this act, and the causeways, when completed, shall forever thereafter be esteemed and taken as public highways, free for the transportation of all goods, wares, commodities or produce whatsoever, and for travelling, on payment of the tolls, imposed by this act; and no other toll or tax whatever, for the use of the water of the said canal and the works thereon erected, or the causeways, shall at any time hereafter be imposed by both or either of the said states, subject, nevertheless, to such regulations as the Legislatures of the said states may concur in to prevent the importation of prohibited goods, or to prevent fraud in evading the payment of duties imposed in both or either of the said states on goods imported into either of them.

Canal, &c. to be deemed public highways, &c.

10. And whereas it is necessary for the making of the said canal, locks and causeways, and other works, that a provision should be made for condemning a quantity of land for the purpose: *Be it enacted*, That it shall and may be lawful for the said president and directors, or a majority of them, to agree with the owners of any land through which the said canal is intended to pass, for the purchase thereof; and in case of disagreement, or in case the owner thereof shall be a feme covert, under age, *non compos*, or out of the state, on application to any two justices of the county in which such land shall lie, the said justices shall issue their warrant, under their hands, to the sheriff of their county, to summon a jury of eighteen inhabitants of his county, of property and reputation, not related to the parties nor in any manner interested, to meet on the land to be valued, at a day to be expressed in the warrant, not less than ten nor more than twenty days thereafter; and the sheriff on receiving the said warrant, shall forthwith summon the said jury, and when met, provided that not less than twelve do appear, shall administer an oath or affirmation to every jurymen that shall appear, That he will fairly, justly and impartially value the land (not exceeding the width of three hundred feet) and all damages the owners thereof shall sustain by cutting the said canal through such land, according to the best of his skill and judgment, and that in such valuation he will not spare any person through favor or affection, nor any person grieve

Manner of obtaining lands necessary for the canal, &c.

through malice, hatred or ill-will : And the inquisition thereon taken shall be signed by the sheriff and some twelve or more of the jury, and returned by the sheriff to the clerk of his county, to be by him recorded ; and on every such valuation the jury is hereby directed to describe and ascertain the bounds of the land by them valued, and their valuation shall be conclusive on all persons, and shall be paid by the said president and directors to the owners of the land, or his legal representatives ; and on payment thereof the said company shall be seized in fee of such lands, as if conveyed by the owner to them and their successors by legal conveyance. *Provided nevertheless,* That if any farther damage shall arise to any proprietor of land in consequence of opening such canal, or in erecting such works, than had been before considered and valued, it shall and may be lawful for such proprietor, as often as any such new damage shall happen, by application to and a warrant from any two justices of the county where the land lies, to have farther damages valued by a jury in like manner, and to receive and recover the same of the said president and directors : but nothing herein shall be taken or construed to entitle the proprietor of any such land to recover compensation for any damages which may happen to any mills, or other works or improvements, which shall be begun or erected by such proprietor after such first valuation, unless the said damage is wilfully or maliciously done by the said president and directors, or some person by their authority.

Land for buildings how to be obtained.

11. *And be it enacted,* That the said president and directors, or a majority of them, are hereby authorised to agree with the proprietor or proprietors for the purchase of a quantity of land, not exceeding one acre, at or near the receipt of the tolls aforesaid, for the purpose of erecting necessary buildings ; and in case of disagreement, or any of the disabilities aforesaid, or the proprietor being out of the state, then such land may be valued, condemned and paid for as aforesaid ; and the said company shall, on payment of the valuation of the said land, be seized thereof in fee simple as aforesaid.

Waters of the lake in Dismal Swamp, vested in the proprietors, &c.

12. And whereas it is represented that the waters of the lake, in the Dismal Swamp, commonly called Drummond's Pond, may be useful for a supply of water to the said canal : *Be it enacted,* That the said lake, so far as the water thereof shall be necessary for the purpose

aforesaid, shall be and is hereby vested in the proprietors of the said canal ; and it shall and may be lawful for the said president and directors, or a majority of them, to open if they shall find it expedient, a cross canal from the lake to the principal canal, for the purpose of drawing from thence a supply of water ; and for executing this work they shall have the same powers which they are authorised to exercise in opening the principal canal. And it shall not be lawful for any person whatsoever, so to cut off or divert the courses of those waters which now flow from the westward into the said lake, as to prevent their continuing to fall into it.

13. And whereas some of the places through which it may be necessary to conduct the said canals, may be convenient for erecting mills and other water-works, and the persons possessors of such situations may design to improve the same, and it is not the intention of this act to interfere with private property, but for the purpose of improving and perfecting the said navigation : *Be it enacted*, That the water, or any part thereof, conveyed through the said canals, shall not be used for any purpose but navigation, unless there shall be sufficient to answer both the purposes of navigation and water-works aforesaid ; in which case the said president and directors, or a majority of them, are hereby empowered and directed to enter into reasonable agreements with the proprietors of such situations, concerning the just proportion of the expenses of making the canals capable of carrying such quantities of water as may be sufficient for the purposes of navigation, and also for any such water-works aforesaid.

Regulation respecting water-works, &c.

14. And whereas the said canals may be of great utility in affording the means of draining the sunken lands through which they pass : *Be it enacted*, That it shall and may be lawful for the proprietors of the said adjacent sunken lands to open cross ditches into the said canals ; *provided* that these cross ditches shall not be within less than one mile of one another on the same side of the canals, and be covered where they pass through the causeways with good bridges of the breadth of the causeways, at the expense of the person cutting them, and also be constructed so as that the water may be entirely prevented passing through them into the canals, at any time when this shall be necessary ; and the works occa-

Cross ditches, &c. to drain sunken lands, how to be opened, &c.

sioned by these cross ditches, except the bridges, shall be kept in repair at the expense of their proprietors.

Transfers of
shares how to
be made.

15. *And be it enacted*, That it shall and may be lawful for every of the said proprietors to transfer his share or shares by deed, executed before two witnesses, and registered after proof of the execution thereof in the said company's books, and not otherwise, except by devise; which devise shall also be exhibited to the president and directors, and registered in the company's books, before the devisee or devisees shall be entitled to draw any part of the profits from the said tolls: *Provided*, That no transfer whatsoever shall be made except for one or more whole share or shares, and not for part of such shares, and that no share shall at any time be sold, conveyed, transferred or held in trust for the use and benefit, or in the name of, another, whereby the said president and directors or proprietors of the said company, or any of them, shall or may be challenged or made to answer any such trust, but that every such person appearing as aforesaid to be a proprietor, shall as to the others of the said company, be to every intent taken absolutely as such; but between any trustee and the person for whose benefit any trust shall be created, the common remedy may be pursued.

Contributions
may be recover-
ed, &c.

16. And whereas it hath been represented that sundry persons are willing and desirous, on account of the public advantage, and also the improvement their estates may receive thereby, to promote and contribute towards so useful an undertaking, and to subscribe sums of money to be paid on condition the said works are completed and carried into execution, but do not care to run any risk or desire to have any property therein: *Be it therefore enacted*, That the said president and directors shall be and are hereby empowered to receive and take in subscriptions on the said conditions, and on the said works being completed and carried into execution, according to the true intent and meaning of this act, that it shall and may be lawful for the said president and directors, or a majority of them, in case of refusal or neglect of payment, in the name of the company as aforesaid, to sue for and recover of the said subscribers, their heirs, executors or administrators, the sums by them respectively subscribed, by action of debt or on the case, in any court of record within this state.

17. *And be it enacted*, That if the said capital and the other aids already granted by this act shall prove insufficient, it shall and may be lawful for the said company, from time to time, to increase the said capital by the addition of so many more whole shares as shall be judged necessary by the said proprietors, or a majority of them, holding at least one hundred and eighty shares, present at any general meeting of the said company. And the said president and directors, or a majority of them, are hereby empowered and required, after giving at least one month's notice thereof in the Virginia and North-Carolina gazettes, to open books at the before-mentioned places for receiving and entering such additional subscriptions, in which the proprietors of the said company for the time being, shall and are hereby declared to have the preference of all others for the first thirty days after the said books shall be opened as aforesaid, of taking and subscribing for so many whole shares as any of them shall choose. And the said president and directors are hereby required to observe in all other respects the same rules therein, as are by this act prescribed for receiving and adjusting the first subscriptions, and in like manner to return under the hands of any three or more of them, an exact list of such additional subscribers, with the sums by them respectively subscribed, into the courts as aforesaid, to be there recorded: And all proprietors of such additional sums, shall and are hereby declared to be from thenceforward incorporated into the said company.

Capital may be increased, &c.

18. *And it is hereby declared and enacted*, That the tolls herein before allowed to be demanded and received are granted and shall be paid on condition only, that the said Dismal Swamp Canal Company shall make the canal thirty-two feet wide, and eight feet in depth (a) below the surface of the earth, and capable of being navigated in dry seasons by vessels drawing three feet water from Deep creek, near Tucker's mill, in Virginia, to the highest good navigation for vessels of the aforesaid draft in Pasquotank river, in North-Carolina, with sufficient locks, each of ninety feet in length, and thirty two feet in breadth, and capable of conveying vessels drawing four feet water at the least, and that each of the causeways shall be twenty feet in breadth.

Conditions on which the tolls are granted.

a [See 1792, C. 373.]

19. *And it is hereby enacted and provided*, That in case the said company shall not begin the said work within

Time limited for beginning and

completing the
canals, &c.
[Time enlarged
by 1799, c. 534.]

one year after the company shall be formed, or if the said company shall not complete the navigation and works as aforesaid, within ten years after the said company shall be formed, then shall all interest of the said company, and all preference in their favor as to the navigation and tolls of the said canals and causeways, be forfeited and cease.

Compact be-
tween the com-
missioners of
North-Carolina
and Virginia.

And whereas at a meeting of commissioners appointed by the States of Virginia and North-Carolina, to agree on the form of an act for cutting the said canal, and for regulating the commerce which may be carried on through it between the citizens of the two States, *to-wit*, Robert Andrews and John Cooper, Esquires, on the part of Virginia, and William M'Kenzie, James Galloway, and John Stokes, Esquires, on the part of North-Carolina, at Fayetteville, in the State of North-Carolina, on the twelfth day of December, in the year of our Lord one thousand seven hundred and eighty-six, the following compact was mutually agreed to by the said commissioners:

Repealed. See
1792, c. 373, s.
2.

First. The State of Virginia agrees that the waters of Elizabeth River, from the said canal to the mouth thereof, the waters of Hampton Road and of Chesapeake Bay to the Capes, and also Roanoke River, wherever it is in Virginia, shall be forever considered as a common highway, free for the use and navigation of vessels belonging to the State of North-Carolina, or any of its citizens; and that they shall not be therein subject to the payment of any toll or charge whatever, imposed for the purpose of raising revenue.

Repealed, ex-
cept as to re-in-
spection. See
ibid.

Secondly. The State of Virginia agrees that no restriction, duty or impost, shall be laid on any commodity which is the growth, produce or manufacture of the State of North-Carolina, brought through the said canal, or over the said causeways, for sale or exportation, and that the same may be exported without re-inspection.

Repealed. See
ibid.

Thirdly. The State of Virginia agrees, that when any imported goods shall within five months after entry be exported through the said canal, or over the said causeways, into the State of North-Carolina, in packages, bales or casks, as imported, the duties thereof shall be remitted or repaid, as the case may be, to the exporter, on his producing, within six months after the aforesaid entry, the certificate of the naval officer of the

district of North-Carolina into which the said canal enters, that the said goods have been entered there.

Fourthly. The State of North-Carolina agrees that the waters of Roanoke River, Meherrin, Nottaway, Chowan, Albemarle Sound as low as the mouth of Pasquotank River, and of Pasquotank from the mouth thereof to the said canal, shall be forever considered as a common highway, free for the use and navigation of all vessels belonging to the State of Virginia, or any of its citizens; and that they shall not be subject therein to the payment of any toll or charge whatever, imposed for the purpose of raising revenue. Repealed. See
ibid.

Fifthly. The State of North-Carolina agrees, that no restriction, duty or impost shall be laid on any commodity which is the growth, produce or manufacture of the State of Virginia, passing through the aforesaid waters to the said canal, or brought through the said canal or over the said causeways, for sale or exportation; and that the same may be sold or exported without re-inspection. Repealed, except as to re-inspection. See
ibid.

In those articles where it is expressed that no duty or impost is to be laid for the purpose of raising revenue, it is not to be understood that the imposition of tolls for the purpose of improving the navigation of the said waters is prevented.

Sixthly. The State of North-Carolina agrees, that when any imported goods shall, within five months after entry, be exported through the said canal, or over the said causeways, into the State of Virginia, in packages, bales or casks, as imported, the duties thereof shall be remitted or repaid, as the case may be, to the exporter, on his producing, within six months after the aforesaid entry, the certificate of the naval officer of Norfolk, that the said goods have been entered there. Repealed. See
ibid.

Seventhly. Imported goods, passing from one part of either of the said two States to another part of the same, through any of the waters of the other State, shall not be subject to any duty imposed for the purpose of raising revenue. Repealed. See
ibid.

Lastly. The citizens of each of the said two States may have the use of the inspections of the other for the purpose of re-inspecting any damaged commodities which have passed through the said canals, on paying the price of the labor of re-inspection, and no more.

Compact ratified,
ed, &c.

And whereas this General Assembly are of opinion that the said compact is made on just and mutual principles, for the true interest of both governments:

XX. *Be it therefore enacted*, That the said compact is hereby approved, confirmed and ratified by the General Assembly of the State of North-Carolina, and that every article, clause, matter and thing therein contained shall be obligatory on this State and the citizens thereof, and shall be forever faithfully and inviolably observed and kept by this government, and all its citizens, according to the true intent and meaning of the said compact; and the faith and honor of this State are hereby solemnly pledged and engaged to the General Assembly of the State of Virginia, and the government and citizens thereof, that this law shall never be repealed or altered by the Legislature of this State, without the consent of the State of Virginia.

Every act, or part of an act, of the General Assembly which comes within the purview and meaning of this act, shall be and the same is hereby repealed. This act shall commence and be in force from and after the passing of a like act by the General Assembly of Virginia.

Read three times, and ratified in General Assembly, }
the 15th day of December, A. D. 1790. }

WM. LENOIR, S. S.
S. CABARRUS, S. C.

Alexander Martin, Esq. Governor.

At a General Assembly, begun and held at Newbern, on the fifth day of December, in the year of our Lord one thousand seven hundred and ninety-one, and in the sixteenth year of the Independence of the said State: being the first session of the said Assembly.

CHAP. 333.

An act to confirm the revival of the laws of this State, made by James Iredell, Esq. Commissioner appointed by an act of the General Assembly, entitled "An act for revising and collecting the acts of the General Assembly of the State of North-Carolina."

See act of 1787,
c. 266.

WHEREAS the whole body of the laws of this State, to the fifteenth day of December, in the year of our Lord one thousand seven hundred and ninety, have, in pursuance of the above act for appointing a commissioner to revise and collect the same, been carefully

compiled and revised, and the said revisal laid before both houses of this present Assembly, and approved of by the said houses:

1. *Be it therefore enacted, &c.* That the said revisal of the laws of the State, made by James Iredell, together with all the acts, parts of acts, and every clause and section of them, and each of them, as inserted and retained in his compilation as commissioner, and not by him expressly declared to be repealed or obsolete, or not in force, are hereby confirmed, (except so far as may be repealed, altered or amended by any law passed this present session of Assembly,) and shall be held, deemed and taken to be and remain in full force, and allowed to be given in evidence, and received as such, in all the courts of law and equity within this State.

Iredell's revisal of the laws of the State confirmed.

2. *And be it further enacted, &c.* That all and every act and acts, clause and clauses, section and sections, of all and every act and acts of the General Assembly of the State in the said revised laws mentioned to be obsolete, expired and repealed, are hereby declared to be obsolete, expired and repealed.

All acts, &c. said to be obsolete, &c. in the revisal, declared to be so.

3. *Provided always nevertheless, and it is hereby enacted,* That all and every judgment, order, decree or sentence of any court heretofore given or passed, and all and every matter or thing heretofore done and performed by any officer or officers, judicial or ministerial, or by any other person or persons whatsoever, in virtue and by force of any act or acts, clause or clauses of any act or acts of the General Assembly of this State, in the said revised laws mentioned to be obsolete, expired or repealed, shall be deemed, held and taken to be good and valid in law, to all intents and purposes, as if the said acts were continued and in full force, any thing herein before contained to the contrary in any wise notwithstanding.

Former proceedings on acts mentioned in the revisal to be repealed, &c. declared valid.

4. *And be it further enacted, &c.* That all the laws in the said compilation, to which the compiler hath subjoined a note, doubting how far the same, or any part or section thereof, may be in force, be and the same, and every part and section thereof, shall be, and the same is hereby suspended until otherwise directed by the General Assembly.

Laws in the revisal said to be doubtful, suspended.

CHAP. 334.

An act to amend the revenue laws of the State.

1. *Be it enacted, &c.* That for the year seventeen hundred and ninety-two, and each succeeding year, it shall be considered a part of the duty of the sheriff of every county in the State, to collect the public taxes due from the inhabitants thereof; and every sheriff, as a compensation for his services in collecting and paying into the treasury, in due time and according to law, shall be entitled to a commission of six per centum on the net amount of the taxes of his county, to be allowed him by way of deduction in the settlement of his accounts with the comptroller.
2. *And be it further enacted,* That it shall be the duty of the sheriffs to collect the public taxes from each and every individual in their counties respectively, who agreeably to the assessment acts of this State are liable to pay taxes, whether their names be contained in the lists of taxables delivered by the clerks or not; and in all cases where the public taxes shall be demanded of any person whose name and taxable property are not contained in the lists furnished by the clerk, the sheriff shall be at liberty and entitled to demand and receive from each and every such person, a sum equal to double the amount which he or she would have been liable to pay in case a list of his or her taxable property had been given in due time, and according to law; *Provided* such failure be owing to his own neglect; the one half part of which the sheriff shall account for and pay into the public treasury, and the remainder they shall be entitled to as a reward for their trouble and services in collecting the same; and in instances where disputes shall arise as to the amount of the tax for which any person may be liable under this act, the papers and records in the clerks' offices shall be held and deemed sufficient authority on the part of the sheriffs, to entitle them to enforce their demands by distraining or otherwise, in case the party hath at any time within two years then last past given a list of his or her taxable property; but in cases where no such lists have been given in, an estimation in writing, under the hands and seals of one justice of the peace and three freeholders, convened for that purpose by the sheriff, shall authorise
- Sheriffs to collect public taxes.
- Their allowance
- Sheriffs to collect the taxes from all individuals liable to pay taxes, whether their names are in the list of taxables or not.
- Double tax.
- Sheriffs may distrain.
- Manner of ascertaining the amount of tax.

and warrant his demand to the amount of such estimation, saving nevertheless to every person the right of appeal from the determination of such justice of the peace and freeholders to the next county court, where the matter shall be tried and finally determined on, in a summary way, during the same term. Trial and appeal.

4. And whereas it often happens that tavern-keepers do not renew their licenses according to law: *Be it therefore enacted*, That henceforward any person applying to court for a tavern license, shall be accountable to the clerk for his fees only, and it shall be the duty of every sheriff in the State, at the time of collecting the public taxes, also annually to collect and receive from each tavern-keeper or other person, accustomed to retail spirituous liquors in less quantity than the quart, the sum of forty shillings current money; and all sheriffs shall at the time of their annual settlement, render unto the comptroller on oath a list of the names of those persons from whom they have recovered a two-fold tax, together with the amount, specifying whether the sums were received for lands, polls, town-property, stud-horses, billiard tables, or other species of taxable property, and they shall also render at the foot of the said list, the names of all persons in their counties from whom they have collected monies for tavern licences; copies of all which lists, after charging sheriffs on the originals, the comptroller shall send sealed up to the clerk of the county, to the end it may be posted up in the court-house thereof; and he shall also render and publish, at each annual meeting of the General Assembly, complete copies of the whole, in order that it may be known whether the public taxes are fully and properly accounted for. Sheriffs to collect tax from tavern-keepers. [Altered by 1816, c. 906.] To render lists to the comptroller, &c.

5. *And be it further enacted*, That at the annual settlement of the sheriffs with the treasurer, he shall allow and pay unto each who accounts and settles in full at the rate of six pence per mile, for every mile such sheriff shall necessarily travel in going to and returning from his office, to be paid on the account of such sheriffs, filed and rendered on oath. Comptroller to send copies to the clerks, and to publish at each Assembly. Mileage allowed to sheriffs.

6. *And be it further enacted*, &c. That each and every sheriff, previous to settling his accounts, shall take and subscribe the following oath in the comptroller's office, to-wit, " I, A. B. sheriff of the county of do, on this day of , 179 , make oath and declare, that the Sheriff's oath on settling with comptroller. (See 1819, c. 988, s. 12.

lists by me now given in, is, to the best of my knowledge and belief, complete, perfect and entire, and contains the full amount of all monies by me or for me received, or which ought to have been received on account of the public taxes for the year 179 , and that I have truly and faithfully endeavoured to execute and govern myself by the act of Assembly, entitled 'An act to amend the revenue laws of the State,' passed December, 1791, without favour, affection or partiality, to the best of my knowledge and abilities. So help me God."

Allowance to masters in chancery and clerks on settling their accounts.

7. *And be it further enacted, &c.* That the masters in chancery and the clerks of the respective superior and county courts, shall be entitled to a commission of six per cent. on the amount of the tax-fees and fines by them received, which shall be allowed on the settlement of their accounts with the comptroller; to be allowed them or either of them, on his or their accounts filed on oath, by the treasurer, provided he shall settle and account in full.

(a See 1806, c. 699, s. 3.)

Clerks of courts and masters in chancery to be suspended for neglect.

8. *And be it further enacted.* That in case any of the clerks of courts in this State, whose duty it is, shall hereafter fail to make return of the amount of the taxable property in their counties to the comptroller, within the time and in the manner by law directed, (a) or in case any master in chancery, or clerks of the superior or county court, shall hereafter fail to settle for and pay up the public monies which they have received and are accountable for, at least once in every year, he or they so failing or neglecting shall be considered guilty of misbehaviour in office, and shall on motion be suspended accordingly by the court or courts of which he or they shall be master in chancery, clerk or clerks; and the court shall thereupon proceed to appoint some other persons to officiate as master in chancery or clerk, as the case may be, until the matter be finally determined, and all official acts of the person so appointed shall be good and valid in law.

Repealing clause.

9. *And be it further enacted, &c.* That all acts and clauses of acts, which come within the purview and meaning hereof, be and the same are hereby repealed and made void.

CHAP. 335.

An act to amend an act, entitled, "An act to prevent thefts and robberies by slaves, free negroes and mulattoes," passed at Tarborough, in the year one thousand seven hundred and eighty-seven; and to amend an act, passed in the year one thousand seven hundred and seventy-four, entitled, "An act to prevent the wilful and malicious killing of Slaves."

Whereas by the before-recited act it shall not be permitted for any master or commander of a vessel to entertain any slave, free negro, or mulatto on board such vessel at any time between sun-set and sun-rise, or during the Sabbath-day, unless such slave, free negro, or mulatto shall belong to the vessel, or shall have a pass from his, her, or their master, mistress, or from some justice of the peace, expressing the time when, and the business for which they go on board. And whereas it appears to this General Assembly that a number of persons from other states and from foreign parts, bring goods in vessels into this state, land and store them, and harbour slaves, free negroes and mulattoes in their stores during the night and on the Sabbath-days, to the great prejudice of the citizens and the honest trader: For remedy whereof,

1. *Be it enacted, &c.* That from and after the passing of this act, it shall not be lawful for any merchant or trader within this state to harbour or trade with any slave, free negro or mulatto, in their store-houses, shops or tenements, wherein they keep goods and merchandize, at any time between sun-set and sun-rise, or on the Sabbath-day, without a pass from his, her or their master, mistress or overseer, or from some justice of the peace, expressing the time when and the business for which they go. Any person so offending shall be subject to the same fines and penalties, to be recovered and applied in the same manner as the fines and penalties on owners and masters of vessels in the before recited act, (a) any law, usage or custom to the contrary notwithstanding.

Not lawful for merchants, &c. to harbour or trade with slaves, &c.

Penalty.

(a) See 1787, c. 267.

2. And whereas it is also represented to this General Assembly, that numbers of slaves, belonging to citizens of this state, pass from county to county, and to other states, and when apprehended produce a free pass or certificate signed with the name of some citizen of the place where they are owned, which it is represented

Penalty on
slaves offering
forged passes.

are often forged, and frequently even by some other servant or slave, and as there is no law now in force in this state to prevent such pernicious practices: *Be it further enacted by the authority aforesaid*, That from and after the passing of this act, if any slave shall be guilty of producing such forged free pass or certificate, he or she so offending, shall on conviction, suffer such corporal punishment as a court shall inflict (death excepted) to be tried in the same manner as slaves are tried for other capital offences.

Penalty for killing
a slave.

(a) Benefit of
clergy taken a-
way—see 1801,
c. 585. Modified—see 1817,
c. 949.

Penalty for en-
ticing slaves to
run away, or for
harbouring
such.

5. And whereas by another act of Assembly passed in the year 1774, the killing a slave, however wanton, cruel and deliberate, is only punishable in the first instance by imprisonment and paying the value thereof to the owner; which distinction of criminality between the murder of a white person and of one who is equally an human creature, but merely of a different complexion, is disgraceful to humanity and degrading in the highest degree to the laws and principles of a free, christian and enlightened country: *Be it enacted by the authority aforesaid*, That if any person shall hereafter be guilty of wilfully and maliciously killing a slave, such offender shall upon the first conviction thereof be adjudged guilty of murder, and shall suffer the same punishment as if he had killed a free man; (a) any law, usage or custom to the contrary notwithstanding. *Provided always*, That this act shall not extend to any person killing a slave outlawed by virtue of any act of Assembly of this state, or to any slave in the act of resistance to his lawful owner or master, or to any slave dying under moderate correction.

4. And whereas the present penalty for harbouring slaves is in depreciated money, and altogether insufficient to prevent or punish the offence: *Be it enacted by the authority aforesaid*, That any person who shall hereafter entice or persuade any servant or slave to absent him or herself from his or her owner's service, or who shall harbour or maintain under any pretence whatever, any runaway servant or slave, shall for every such offence, forfeit and pay to the owner of such servant or slave the sum of fifty pounds, to be recovered by action of debt before any jurisdiction having cognizance thereof, and be further liable to the said owner in an action for damages.

5. *And be it further enacted*, That all acts and clauses of acts coming within the meaning of this act and contrary thereto, be and the same are hereby repealed and made void. Repealing clause.

CHAP. 336.

An act for raising a Revenue for the payment of the civil list and contingent charges of Government, for the year one thousand seven hundred and ninety-two, and to repeal an act, entitled, "An additional act to an act, entitled, An act for raising a public Revenue for the support of Government, and to repeal an act entitled, An act to suppress excessive gaming."

And whereas all public gaming tables are destructive of the morality of the inhabitants of this state, and tend greatly to the encouragement of vice and dissipation: And whereas the taxes already imposed are inadequate to the suppression of the same: *Be it therefore enacted*, That all public gaming tables, such as EO, AB. and ABC, Faro-banks, pass-die tables, and all others of whatever nature, or by whatever name or denomination they shall be called, are hereby totally forbidden to be used in this state by any person or persons whatever: And all justices of the peace, and the commissioners of police in the several towns of this state, are hereby authorised and directed, in case of information made to them, or any of them, on oath, that such gaming-table is in the possession and use of some person within the limit of their jurisdiction, to destroy and annihilate the same by every means in their power. And each and every person who shall offer to keep up or use the same, after the first day of May next, shall be subject to the penalty of one thousand pounds, to be recovered in an action of debt by any person suing for the same, the one half thereof to be appropriated to the use of the party informing, the other half to the use of the state. *Provided always*, That billiard and back-gammon tables shall not come under the meaning and purview of this act.

Public gaming tables prohibited.

(See for further prohibitions,

1794, c. 429.—

1798, c. 502.—

1800, c. 552.—

1801, c. 581.)

Penalty on keeping them up.

Billiard and back-gammon tables excepted.

CHAP. 337.

(See Ordinance of the 4th August, 1788, c. 297, act of 1792, c. 367, s. 4.)

An act to carry into effect the Ordinance of the Convention held at Hillsborough, in July, one thousand seven hundred and eighty-eight, entitled, "An Ordinance for establishing a place for holding the future Meetings of the General Assembly, and the place of residence of the chief officers of the state."

[The whole of this act but the following section has had its effect.]

The place so fixed to be the unalterable seat of government, &c.

And be it further enacted, &c. That the place which the said commissioners, or a majority of them, shall so determine on, shall be the seat of government, and the unalterable place of holding the future assemblies of this state, and the place of residence of the chief officers of the state, agreeable to the true intent and meaning of the recommendation of the General Assembly, and the ordinance of the Convention herein before mentioned. *Provided always,* That until convenient buildings can be erected on the said place for the purposes aforesaid, the General Assembly from time to time shall have power to appoint any other place or places for the meeting of the General Assembly, and for the residence of the chief officers of the state, notwithstanding this law.

CHAP. 338.

An act for the punishment of such persons as shall procure or commit any wilful perjury.

Penalty for perjury.

1. *Be it enacted, &c.* That if any person shall wilfully and corruptly commit perjury, on his or her oath or affirmation, in any suit, controversy, matter or cause depending in any of the courts of this state, or on any oath or affirmation made, or in any deposition or affidavit taken pursuant to the laws of this state, every such person so offending, and being thereof convicted, shall be fined not exceeding the sum of five hundred pounds, and shall stand in the pillory for one hour, at the expiration of which time both the ears of the person so offending shall be cut off, and severed entirely from the head; and the ears so cut off shall be nailed to the pillory by the officer, and there remain until the setting of the sun; and the person so offending shall be thereafter rendered incapable of giving testimony in any of the

courts of this state, or in any case whatsoever, until such time as the judgment so given against the said offender shall be reversed.

2. *And be it further enacted*, That if any person shall by any means procure another person to commit corrupt and wilful perjury, on his or her oath or affirmation in any suit, controversy, matter or cause depending in any of the courts of this state, or any oath or affirmation made, or in any affidavit or deposition taken pursuant to the laws of this state, the person so offending, and being thereof convicted, shall stand in the pillory one hour, have his or her right ear cut off, and shall be fined at the discretion of the court in a sum not exceeding five hundred pounds; and the person so offending shall be thereafter rendered incapable of giving testimony in any of the courts of this state, or in any case whatsoever, until such time as the judgment so given against the said offender shall be reversed.

Penalty for subornation of perjury.

3. *And be it further enacted*, That in every presentment or indictment to be prosecuted against any person for wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and by what court, or before whom the oath or affirmation was taken, (averring such court, or person or persons to have a competent authority to administer the same) together with the proper averment or averments to falsify the matter or matters wherein the perjury or perjuries is or are assigned, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceedings, either in law or equity, other than aforesaid, and without setting forth the commission or authority of the court, or person or persons before whom the perjury was committed.

Indictments for perjury how to be brought.

4. *And be it further enacted*, That in every presentment or indictment for subornation of perjury, or for corrupt bargaining or contracting with others to commit wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceedings, either in law or equity, and without setting forth the commission or authority of the court, or person or persons before whom the perjury was committed, or was agreed or promised to be committed.

And for subornation of perjury.

Duty of judges and justices in bringing offenders to trial.

5. And in order to prevent as much as possible the commission of such crimes in future, *Be it further enacted*, That when the judges or justices of any of the courts within this state shall be fully convinced that any person hath committed, or procured any person to commit, wilful and corrupt perjury, either as a witness, or in any affidavit or deposition to procure a certiorari, injunction or other process, or in any case wherein such oath or affirmation has been made, or the affidavit or deposition has been taken in pursuance of the laws of this state, it shall be the duty of such justices, judge or judges, to cause the person so offending to enter into recognizance for his appearance as in other criminal cases, and they shall direct the counsel acting for the state to take the necessary legal measures to support such prosecution, and the supreme executive officer of the state for the time being may be entered as prosecutor. *Provided nevertheless*, That the judge or judges who directed such prosecution, shall not sit on the trial thereof.

CHAP. 339.

An act to prevent malicious and unlawful maiming and wounding.

(a 1754, c. 56.)

Whereas some doubts have arisen concerning the construction of an act, entitled, “An act to prevent malicious maiming and wounding,” (a) made in the year one thousand seven hundred and fifty-four: And whereas it is necessary that such inhuman and disgraceful practices should meet with adequate punishment:

Penalty for maliciously maiming of a tongue or an eye.

1. *Be it enacted, &c.* That if any person or persons shall of malice aforethought, unlawfully cut out or disable the tongue, or put out an eye of any person, with intent to murder, maim or disfigure, the person or persons so offending, their counsellors, abettors and aiders, knowing of and privy to the offence as aforesaid, shall for the first offence, stand in the pillory for two hours, have both his ears nailed to the pillory and cut off, and receive thirty-nine lashes on the bare back: and for the second offence shall be and are hereby declared to be guilty of felony, and shall suffer as in case of felony, without benefit of clergy; but that no conviction and judgment under this act, shall work a forfeiture of goods and chattels, lands and tenements, or corruption of blood.

2. *And be it further enacted*, That if any person or persons shall on purpose unlawfully cut or slit the nose, bite or cut off a nose or lip, bite or cut off an ear, or disable any limb or member, of any other person, with intent to murder, or to maim or disfigure such person, in every such case the person or persons so offending, being thereof lawfully convicted, shall be imprisoned for the space of six months, and fined at the discretion of the court before whom such offence shall be tried.

Or the nose, lip, ear, &c.

3. *And be it further enacted*, That the above mentioned act, entitled, “An act to prevent malicious maiming and wounding,” be and the same is hereby repealed after the first day of May next.

Repealing clause.

4. *And be it further enacted*, That no person or persons shall be subject to the penalties inflicted by this act, unless the offence with which such person or persons may be charged, shall be committed after the first day of May next.

When in force.

CHAP. 340.

An act to regulate the practice of Physic.

1. *Be it enacted, &c.* That every person practising as a physician or surgeon, shall deliver his account, or bill of particulars, to all and every patient in plain English words, or as nearly so as the articles will admit; all and every one of which accounts shall be liable, whenever the patient, his or her executors or administrators shall require, to be taxed by the court and jury of the court of pleas and quarter sessions of the county where the party complaining resides, calling to their aid and assistance such testimony as they may think proper.

Physicians how to make out their accounts, &c.

CHAP. 341.

An act to amend an act, entitled “An act concerning proving Wills, and granting Letters of Administration, and to prevent frauds in the management of intestates’ estates.” (See 1715, c. 10.)

Whereas by the fifth section of the said act it is directed, that the bonds given by administrators upon the estates of persons dying intestate, for their faithful administration upon such estates, shall be made payable

to the Governor and Commander in Chief of the state for the time being, and shall be assigned and transferred by him to any person or persons injured, in order to maintain an action thereon ; and the same being found in many instances inconvenient and impracticable :

Administration
bonds to be tak-
en to the chair-
man of the
court.

1. *Be it therefore enacted*, That from and after the twentieth day of May next, all such administration bonds shall be taken and made payable to the chairman of the court for the time being, and his successors in office ; which bonds shall and may be put in suit, at the instance of any person injured, in the name of the chairman of the court, without any assignment whatever, any law to the contrary, heretofore made, in any wise notwithstanding.

Former bonds
may be sued on
in the name of
the Governor,
&c.
(See 1805, c.
687.)

2. *And be it further enacted*, That all bonds as aforesaid, that are or may be taken payable to the Governor of this state and his successors, and directed by law to be assigned by him to the party injured, shall and may in future be sued and prosecuted in the name of the Governor, by the party injured, without the necessity of such assignment, any law to the contrary notwithstanding.

CHAP. 342.

An act for altering the oath of allegiance to the State of North-Carolina, and for directing the Sheriffs to publish the oath taken by the members of the General Assembly.

Whereas by the adoption of the constitution of the United States, an alteration in the oath of allegiance to the State of North-Carolina is become necessary :

Oath or affirma-
tion to be taken
by state officers.

1. *Be it therefore enacted, &c.* That every person who shall be chosen or appointed to hold any office of trust or profit in this State, shall, before his entering upon the execution of the office to which he shall have been chosen or appointed, take and subscribe the following oath or affirmation, viz. “ I, A. B. do solemnly and sincerely swear or affirm, that I will be faithful and bear true allegiance to the State of North-Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof ; and that I will endeavour to support, maintain and defend the constitution of the said State, not inconsistent with the constitution of the United States, to the best of my

knowledge and ability. So help me God." Where such persons shall be one of the people called Quakers, he shall take and subscribe the following affirmation, to-wit, "I, A. B. do solemnly and sincerely declare and affirm, that I will truly and faithfully demean myself as a peaceable citizen of the State of North-Carolina: that I will be subject to the powers and authorities that are or may be established for the good government thereof, not inconsistent with the constitution of the said State, and the constitution of the United States, either by yielding an active or passive obedience thereto; and that I will not abet or join the enemies of this State by any means, in any conspiracy whatever against the said State; and that I will disclose and make known to the legislative, executive, or judicial powers of the said State, all treasonable conspiracies, which I shall know to be made or intended against the said State."

2. *And be it further enacted*, That all members of the General Assembly, and all officers chosen or appointed, or who shall hereafter be elected, chosen or appointed to any office of trust or profit within this State, shall, agreeable to act of Congress, take the following oath or affirmation, viz. "I, A. B. do solemnly swear or affirm (as the case may be) that I will support the constitution of the United States." Which oath shall be taken by the members of the present General Assembly immediately after the ratification of this act; by all persons holding offices of trust or profit within this State, at the first county court which shall be held in the counties in which they respectively reside, after the fifteenth day of February next; and by the members of all future General Assemblies, and by all other persons who shall hereafter be chosen or appointed to any office of trust or profit within this State, before they enter upon the execution of the office to which they shall have been chosen or appointed.

Oath or affirmation to support the constitution of the United States, to be taken.

(See 1801, c. 580.)

3. *And be it further enacted*, That all laws coming within the purview and meaning of this act are hereby repealed. *Provided nevertheless*, That nothing in this act contained shall be so construed as to prevent the public officers of this State from taking the oaths of office prescribed by law.

Repealing clause.

CHAP. 343.

An act to prevent wilful and negligent escapes, and to declare the duty of public officers in certain cases.

Penalty on sheriffs, &c. suffering criminals to escape, &c.

Temporary appointment of sheriff.

Duty of attorney general, &c. to prosecute for such escapes.

1. *Be it enacted, &c.* That when any person charged with any crime or misdemeanor whatsoever, shall be legally committed to any sheriff, deputy sheriff, constable or gaoler within this state, and such sheriff, deputy sheriff, constable or gaoler wilfully or negligently shall suffer such person so charged and committed to escape out of his or their custody, the sheriff, deputy sheriff, constable or gaoler so offending, being thereof lawfully convicted, shall be removed from office, and fined at the discretion of the court before whom the trial may be had; and in all such cases it shall be sufficient in support of the indictment against such sheriff, deputy sheriff, constable or gaoler, to prove that such person so charged was committed to his or their custody, and it shall lie upon the defendant to shew that such escape was not by his consent or negligence, but that he had used all legal means to prevent the same, and acted with proper care and diligence. And when a sheriff shall, in consequence of a conviction under this act, be removed from office, the justices of the court of pleas and quarter sessions of the county for which such sheriff had been appointed, are hereby authorised upon such conviction and removal, to elect and nominate a freeholder, as required by law, to execute the office of sheriff until the next annual election, who shall thereupon be commissioned by the governor or commander in chief as in other cases. *Provided,* That such removal of a sheriff shall not affect his power or duty as a county treasurer of the public revenue, but he shall proceed on such duty, and be accountable as if such conviction and removal had not been had.

2. *And be it further enacted,* That it shall, and is hereby declared to be a part of the duty of the attorney or solicitor general, as the case may be, that when they shall be informed or have knowledge of any felon, or person otherwise charged with any crime or offence against the state, having escaped out of the custody of any sheriff, deputy sheriff, constable or gaoler, to take the necessary measures to prosecute such sheriff, deputy sheriff, constable or gaoler so offending; and for every such offence, and on all indictments in such cases, he

may endorse the governor for the time being as prosecutor.

3. And whereas frauds and deceits are often committed on the treasury and other offices of the state, which pass unpunished because the public alone are injured: *Be it enacted*, That when any fraud or deceit shall be committed in or upon any of the public offices of this state, the person appointed to, or who has charge of such office, shall give immediate information thereof to the attorney or solicitor general, as the case may be; whose duty it shall be, when such fraud or deceit shall be an indictable offence, to take all legal measures to prosecute the person or persons so offending with effect; and on all indictments in such cases, the person in whose office such offence hath been committed, shall be endorsed as prosecutor in his public or official character.

And for frauds, &c. committed on the Treasury, &c.

CHAP. 344.

An act to provide a proper seal for the state, and the several courts of record. (See 1778, c. 135.

1. *Be it enacted, &c.* That the governor be, and he is hereby authorised and required to procure for the state a seal, which shall be called the Great Seal of North-Carolina, to be used for attesting and authenticating grants, proclamations, commissions, and other public acts, in such manner as may be directed by law, and the usage established in the public offices: also a seal for each of the courts of record within this state, for the purpose of authenticating the papers and records of such court when required. (a)

Governor to procure a Great Seal and Seals for the courts of record.

(a See 1806, c. 694, s. 10.

2. *And be it further enacted*, That the seals provided by the direction of this act, shall be prepared with one side only, and calculated to make the impression on the face of such grant, commission, record, or other public act; and the present Great Seal shall not be used in any case whatever after the seals prescribed by this act are procured. (b)

How to be prepared, &c.

(b See 1793, c. 396—1794, c. 419.

3. *Be it enacted*, That the Governor be, and he is hereby authorised to issue his warrant on the treasury, for such sum as may be necessary to discharge the expense of procuring the seals aforesaid; and he shall

Expense of the seals how to be paid, &c.

cause the said seals to be delivered to the proper officers, who shall give a receipt for the same, and be accountable for the safe keeping thereof.

Where seals have been lost, &c. how they may be supplied, &c.

(Repealed by act of 1807, c. 727, s. 2.)

4. And whereas the seals annexed to grants and other public papers are in many cases lost and destroyed: *Be it enacted*, That in all such cases where any person or persons may find it necessary to have the seal of the state put again to such grant or other public paper, that he, she or they may prefer his, her or their petition to the Governor and Council, who shall, if they shall deem the same proper, after examining such grant or other paper, order and direct the Secretary to put the seal of the state thereto, for which he shall be allowed the usual fees.

CHAP. 345.

(See act 1784, c. 206, and the acts there referred to.)

Flour barrel how much to contain, &c.

(See also 1807, c. 728.)

An act to improve the inspection of flour and other commodities in this state, and to alter the inspectors fees in certain instances.

1. *Be it enacted, &c.* That each barrel of flour exposed to sale in, or exported from this state by land or water, shall contain one hundred and ninety-six pounds of net flour, well ground, bolted and packed; and every maker and manufacturer of the same, shall brand in figures on the cask the net weight of the same, with the first letters of his christian name, and his surname at full length; and every cask made to contain flour for sale or exportation as aforesaid, shall be made of good seasoned wood, twenty-six inches in length, the heads whereof shall be seventeen inches in width, and shall be bound with eight good hoops.

Barrels to be nailed, &c.

1 shilling allowed for bolting, packing and nailing.

2. *And be it further enacted*, That every maker and manufacturer of flour shall be obliged to nail each cask sufficiently, with not less than fourteen nails, and a part thereof in the hoops, that is to say, four nails in each head, and three in each of the last quarter hoops; and each miller or manufacturer as aforesaid, shall receive the sum of one shilling for bolting, packing and nailing every barrel of flour bolted, and that only: and every miller or manufacturer as aforesaid, failing to perform any or all the above requisites and duties, or transgressing the same, shall forfeit and pay the sum of ten shillings for every barrel by him so manufactured;

to be recovered by any person complaining and informing before any jurisdiction having cognizance of the same.

3. *And be it further enacted*, That every inspector of flour shall be obliged to bore each cask by him inspected, with a piercer of the length of the cask, and not less than half an inch in diameter; and shall brand on the same, in words of full length, the quality of the flour, either fine or superfine, as he may judge the same to be; and every inspector as aforesaid shall be allowed the sum of sixpence(a) for each barrel so branded and inspected by him; and every inspector as aforesaid shall, if required, give the owner of the flour so inspected and branded, a certificate of the same; and shall keep a record, or book of inspection, of all flour so branded and inspected as aforesaid, setting forth the owner of the flour and miller's name, with the quality of each cask.

Inspector's duty, and his fee for flour.

(a five cents by 1813, c. 852, s. 4.)

4. *And be it further enacted*, That if any exporter or owner of flour, after having the same inspected, shall attempt to repack or adulterate any flour by him received, either by mixing or putting other flour into the said cask or casks, in order to defraud the purchaser, such owner or exporter shall forfeit and pay the sum of ten pounds, to any person complaining or informing, for every such offence, to be recovered before any jurisdiction having cognizance thereof.

Penalty for adulterating, &c. inspected flour.

5. *And be it further enacted*, That every inspector failing to perform the duties and requisites above mentioned, shall forfeit and pay the sum of five pounds for every offence by him so committed, to be recovered by action of debt before any jurisdiction having cognizance of the same, by any person complaining or informing thereof.

Penalty on inspectors for neglect of duty.

6. And whereas the fees allowed to inspectors are in some instances inadequate to their services: *It is hereby enacted*, That from and after the passing of this act, the respective inspectors shall and may lawfully take and receive the following fees, and no more: For each barrel of pork or beef, one shilling; for each barrel of rice or butter, eight pence; for each barrel of fish, four pence; for each barrel of tar, two pence; for each barrel of pitch or turpentine, three pence; for each hundred staves or heading, three pence; for every thousand shingles, three pence; and for every thousand feet of boards, plank or scantling, one shilling: and the fees

Inspectors' fees. (See 1784, c. 221, s. 4, and supra s. 3.)

By whom paid, of inspection, in all instances, shall be paid by the purchaser or exporter of the articles inspected. *Provided always*, That when the purchaser and seller agree on the disposal or exportation of any shingles, staves, heading, boards, plank or scantling, they shall and may inspect the same without calling in the aid of any inspector or inspectors whatever; any law to the contrary notwithstanding. *And provided further*, That nothing contained in this act shall affect contracts heretofore entered into for staves, shingles, plank or scantling.

Inspector to hold his office during good behaviour, &c.

7. *And be it further enacted*, That all public inspectors of commodities heretofore appointed, and who shall hereafter be appointed, shall hold their office during good behaviour. *Provided nevertheless*, That where any inspector shall be guilty of mal-practice or misbehaviour in his office, on complaint being made to the county court, they shall issue a citation, and cause him or them to appear before the said court at the ensuing term; and if the charges shall be supported by good and sufficient testimony, and confirmed by the verdict of a jury, they shall remove such inspector from his said office, and appoint another in his stead, who shall hold his office during good behaviour as aforesaid; any law to the contrary notwithstanding.

Repealing clause.

8. *And be it further enacted*, That all acts and clauses of acts, coming within the meaning and purview of this act, are hereby repealed and made void.

CHAP. 346.

(See 1748, c. 44, s. 5.) An act for quieting ancient titles and limiting the claim of the state.

Whereas in consequence of the loss of original grants and deeds, and the destruction of public records, lands have been and may be entered as vacant, although they have already been granted, and have been long actually possessed and improved: For prevention whereof, and for quieting men's estates,

Ancient titles quieted.

1. *Be it enacted, &c.* That where any person or persons, or the person or persons under whom he, she or they claim, shall have been, or shall continue to be in possession of any lands, tenements or hereditaments whatsoever, under titles derived from sales made either by creditors, executors or administrators of any person

deceased, or by husbands and their wives, or by endorsements of patents or other colourable title, for the space of twenty-one years, all such possessions of lands, tenements or hereditaments, under such title, shall be, and are hereby ratified, confirmed and declared to be a good and legal bar against the entry of any person or persons, under the right or claim of the state, to all intents and purposes whatsoever; any former act, law or usage to the contrary in any wise notwithstanding. *Provided nevertheless*, That the possession so set up shall have been ascertained and identified under known and visible lines or boundaries.

Wherein twenty-one years' possession good against the state

CHAP. 347.

An act directing the manner in which such persons as have been or may be evicted of property purchased under the confiscation laws of this state shall be indemnified, and also the manner in which payments shall be received from those who are or may be indebted to the state in any amount of certificates.

Whereas it is represented and made appear to the satisfaction of the General Assembly, that those persons who purchased property under the said confiscation laws, have, and may sustain great damage by judgment and recoveries obtained against them, for the property by them so purchased, or by judgment against them, where they have brought suit for such property; for remedy whereof, and to prevent such judgment and recovery from being obtained by fraud and collusion, to the injury of the state :

1. *Be it enacted, &c.* That in all cases where any person or persons having purchased property under the confiscation laws of this state, shall sue or be sued for the same, in any of the superior courts of law within this state, and in all cases where suits may be now depending on such account, it shall be the duty of the Clerk of such court to give information thereof unto the Attorney or Solicitor-General, and supply him with a copy of the declaration filed in the said suit; and the Attorney or Solicitor-General shall *ex officio* be bound to assist in the said suit, and take such legal precautions therein, as may appear to him best calculated to secure the interest of the state.

Attorney-General's &c. duty in suits respecting confiscated property.

Suits in what courts to be brought.

2. *And be it further enacted*, That where the person claiming under the state is the plaintiff, he shall originate his suit in the superior court of law or court of equity; and if suit be commenced against such person in any county court, the judge or judges of the superior court of law for the district wherein such county is situated, shall, upon motion, cause the proceedings to be brought up before such superior court by certiorari or other proper writ.

Allowance on certificates at 4s to the pound.

3. *And be it further enacted*, That in all payments to be made from the state to the citizens thereof, on account of confiscated property sold under the laws commonly called confiscation laws, which the purchasers have been or shall be evicted of, the value of certificates shall be, and the same are hereby declared to be of the value of four shillings currency for every pound of principal and interest, and shall be paid accordingly.

How the party evicted shall obtain relief.

4. *And be it further enacted*, That when any person or persons shall be evicted of land or other property purchased under the confiscation laws of this state, after due trial and proper defence made agreeable to this act, it shall be incumbent upon him or them, to prove to the satisfaction of the court, that the certificates for which the land, or other property sold, were actually paid to the officer authorised by law to receive the same in behalf of the state; and upon such proof being made, the person or persons so evicted or injured shall receive a certificate thereof from the clerk of the court, and signed by the judge or judges before whom the enquiry was made, and also specifying the amount of the certificates so paid, which shall be a sufficient voucher to the Treasurer for paying over the amount so certified, agreeable to the value of certificates as rated and ascertained by this act, and he is hereby authorised and directed to pay the same accordingly.

Where confiscated property is refunded, &c. —relief to the purchaser.

5. *And be it further enacted*, That where any property purchased under the sales made by virtue of the confiscation laws has been or may hereafter be restored by the General Assembly, upon due proof being made, to the satisfaction of the Treasurer, that the certificates were actually paid by the purchaser or purchasers, he or they shall be entitled to the same relief as is provided by this act for persons that have been evicted of property purchased under the confiscation laws.

6. *And be it further enacted*, That the Treasurer shall receive payment from all persons indebted to the state, agreeable to the rules, regulations and restrictions directed by this act, in cases where the state is indebted to any citizen thereof. *Provided*, that nothing in this act contained shall be so construed, as to exonerate any public officer of this state from the payment of the money or certificates by him received in consequence of the official trust reposed in him; any thing in this act to the contrary notwithstanding.

Treasurer to receive payment from debtors of the state agreeably to this act. See sec. 3.

CHAP. 348.

An act for giving a further time for probate and registration of bills of sale for slaves and marriage settlements.

Whereas it appears to the General Assembly that many of the good citizens of this state, through inattention or neglect, failed to have their bills of sale for slaves proved and registered within the time limited by law, and may thereby be much injured unless a longer time is given for that purpose; and the Legislature ever being ready to give a just and equitable relief; Therefore,

(See 1789, c. 315, and 1802, c. 622.)

1. *Be it enacted, &c.* That all bills of sale for slaves, not already recorded in manner required by law, shall have a further time of twelve months allowed for probate and registration; and shall when thus authenticated and perpetuated, be held and deemed as valid in law to all intents and purposes, as if they had been proved and registered within the time required by law; any law, usage or custom to the contrary notwithstanding.

Farther time allowed for registering bills of sale.

2. And whereas in the first section of an act, entitled, "An act directing that marriage settlements and other marriage contracts shall be registered, and for preventing injury to creditors," passed at Newbern in the year one thousand seven hundred and eighty-five, it is directed that all marriage settlements and other marriage contracts shall be proved in the same manner as other deeds, and shall be registered: and whereas it appears to this General Assembly, that a number of good citizens, for want of sufficient information, have neglected to avail themselves of the benefit of the said act: For remedy whereof, *Be it enacted*, That all marriage contracts

For marriage settlements and contracts.

(a See 1785, c. 238, s. 1, and 1799, c. 540, s. 1.)

which were made, formed and entered into previous to the passing of the above recited act, shall have a further time of twelve months allowed for probate and registration ;(a) and shall when thus authenticated and perpetuated, be held and deemed as valid in law, to all intents and purposes, as if they had been proved and registered within the time required by the above recited act ; any law, usage or custom to the contrary notwithstanding.

CHAP. 349.

An act to amend an act passed at Hillsborough, in the year one thousand seven hundred and eighty-four, entitled, "An act to prevent the exportation of unmerchantable commodities."(a)

(a) 1784, c. 206.

Whereas by the tenth section of the said act it is enacted, that every barrel of beef or pork for exportation, shall contain two hundred and twenty pounds of good, sound and clean merchantable meat ; and the same being injurious to the people of this state, and inconsistent with the laws of other states :

Guage, &c. of barrels of beef.

1. *Be it therefore enacted, &c.* That from and after the passing of this act, every merchantable barrel of salted beef, which shall be exposed to sale in, or exported from this state, shall be of the guage of twenty-eight gallons wine measure, and no more, and shall contain two hundred pounds weight of salted meat, and not more than two shins ; and every merchantable barrel of salted pork, which shall be exported from or exposed for sale within this state, shall be of the guage of twenty-nine gallons of wine measure, and each barrel shall contain two hundred pounds weight of salted meat, and not more than two heads : And every half barrel of beef and pork shall be of the guage of fifteen gallons of the measure aforesaid, and shall contain one hundred pounds weight of salted meat ; and if beef not more than one shin, and if pork not more than one head ; subject in every other respect to the rules, regulations and restrictions laid down in the said act : *Provided always,* That this act shall not reach or affect any contracts for beef or pork heretofore made or entered into.

And pork.

Part of an act repealed.

2. *And be it further enacted,* That so much and no more of the said recited act, entitled, "An act to prevent the exportation of unmerchantable commodities,"

passed at Hillsborough, in April, one thousand seven hundred and eighty-four, (a) as is by this act altered, amended or supplied, be, and the same is hereby repealed, annulled and made absolutely void ; any thing therein contained to the contrary thereof in any wise notwithstanding.

CHAP. 350.

An act directing in what manner any person who heretofore has entered or who may hereafter enter lands in any county of this state, shall be entitled to have his or her money or certificates returned.

1. *Be it enacted, &c.* That when the surveyor or his deputy for any county within this state, shall survey a less quantity of land than is contained in the warrant directed to him from the entry-taker, if the claimant is desirous to have the money or certificates returned for such deficient land, then and in that case, it shall be the duty of the surveyor who surveyed or proceeded to survey such warrant, to take in open court the following oath, to-wit, “ I, A. B. surveyor of the county of _____ do solemnly swear or affirm, as the case may be, that I proceeded to survey a tract of land for _____, by virtue of a warrant number _____, adjoining the lands of _____, and on the completing the survey of the vacant land agreeable to the location of the said warrant, there is a deficiency of _____ acres contained in the said warrant, and no vacant land wherewith the same may be satisfied agreeable to the location, as all lands adjoining are either taken by grants or entries of an elder date. So help me God.”

Surveyor's oath where there is a deficiency of land.

2. *And be it further enacted,* That if it should so happen that the whole of the lands contained in said warrant shall have been taken by grants or entry of an elder date, in that case the surveyor shall set the same forth in his affidavit, and also the person's name by whom such land was so previously taken up, so that it is not in the power of the said _____ to get any part of his said entry, agreeable to the location of his warrant.

Where prior entries exclude it altogether.

3. *And be it further enacted,* That the said claimant upon receiving the deposition of the surveyor, may then proceed to the entry-taker of his county, and file such

Claimant how to proceed to recover his certificates, &c.

deposition with him, upon which the entry-taker shall note the same in the margin opposite the entry : and the said entry-taker shall then return the money or certificates(*a*) to the said claimant for such part as the surveyor on his oath hath certified that there was not vacant land for. *Provided*, That where the claimant can get no part of the said land, he shall also return the warrant to the entry-taker.

(*a* See 1794, c. 417, s. 2.)

Where they have been paid into the treasury, &c.

(See 1796, c. 455, s. 8, and 1798, c. 493, s. 4.)

4. *And be it further enacted*, That in case the entry-taker hath made return of any land circumstanced in the manner before described, and paid the money or certificates to the treasurer, previous to the claimant's application to him for the repaying thereof, in that case the said claimant shall take the said deposition of the surveyor, and have the same certified by the clerk of the county court : which certificate of the clerk shall specially set forth, that A. B. is or was the surveyor or deputy-surveyor of the county, and the said clerk shall then inclose the deposition of the surveyor, and seal the same up within his certificate; and the claimant upon delivery by himself or other person of the deposition and certificate aforesaid to the treasurer, shall be entitled to receive out of the treasury as much money per acre as land may now be entered for by law.

Manner of proceeding, &c. where returns have been made to comptroller.

(*b* See 1794, c. 417, s. 2.)

5. *And be it further enacted*, That where it shall so happen that the entry-taker has issued a warrant to any claimant, and received neither money nor certificates(*b*) but nevertheless has made return of such entry to the comptroller's office, and after such return the claimant applies to him, the said entry-taker, to be released from payment agreeable to the tenor of this act, in that case the entry-taker shall release the claimant for so much as he is entitled to ; and the deposition of the surveyor, certified by the clerk of the county, sealed up in manner before directed, shall be a voucher to the treasurer in the settlement of his accounts with the comptroller, and likewise shall be a sufficient voucher to the entry-taker for so much as is certified in the manner aforesaid. *Provided nevertheless*, That this act is not intended to relieve any claimant, who has entered land within the territory ceded by this state to the Congress of the United States.

Proviso.

Penalty for false certificates, depositions, &c.

6. *And be it further enacted*, That the quantity of acres set forth in the deposition of the surveyor shall be wrote in words at full length, and no way biotted ; likewise

the certificate of the clerk, transmitted to the treasurer, shall set forth the circumstances in like manner ; and if any surveyor makes a false deposition, he shall on conviction forfeit his office, and be also subject to the penalties inflicted for wilful and corrupt perjury ; and the clerk making a false certificate, shall on conviction forfeit his office, and be subject to fine and imprisonment, at the discretion of the court before whom such conviction may be had.

CHAP. 351.

An act to amend an act, entitled, “ An act to regulate the descent of real estates, to do away entails, to make provision for widows, and to prevent frauds in the execution of last wills and testaments.” (See 1784, c. 204, and the acts there referred to.)

Whereas the power given by the said act to widows, of dissenting from their husband’s will, as therein regulated, deranges the whole estate, and may produce the most unhappy and expensive dissensions and law-suits :

1. *Be it enacted, &c.* That when a widow has by virtue of the power to her given in the said act, signified her dissent from her husband’s will, and the sheriff in consequence thereof, and by order of the court for that purpose made, has summoned a jury agreeable to the said act, to allot and set off to such widow her dower of her said husband’s lands, it is hereby declared to be the duty of the jury so summoned, in the first place to enquire whether by the will the widow is as conveniently and comfortably provided for as if her dower was to be allotted to her according to the said act, and if they shall be of opinion that she is so provided for, they shall make return of the same ; by which return the widow shall be precluded from any farther claim upon her husband’s lands, except such only as are devised to her by the will.

Duty of jury in allotting dower when widow dissents from the will.

2. *And be it further enacted,* That when a jury are summoned agreeable to the said act, to allot and set off to a widow so dissenting as aforesaid, her part and proportion of her husband’s personal estate to which by the said act she is entitled, the jury shall enquire, in the first place, if the legacy or legacies given her by the will, is or are equal in value to the distributive share

Their duty in allotting widow’s share of personals, in case of her dissent.

she would take under the said act; and if they shall be of opinion that this is the case, they shall make return that they have so found the same, and the widow shall be therewith content: but if the jury shall be of opinion that the provision made for the widow is not equal in value to such distributive share, and there is a residuum of the estate not given away in particular legacies, they shall allot and set off to her so much of the residuum, if it consist of specific property, as will make up the deficiency; and if the residuum consist of money, they shall assess the deficiency, and return their assessment to the court; upon which return the widow shall have judgment for so much against the executors or administrators, with stay of execution for such length of time as the court shall direct, on consideration of the circumstances of such widow, and the estate of the deceased; and if in either case the residuum is insufficient to make up the deficiency, it shall be applied to that purpose after the payment of debts, so far as it will extend, and the balance shall be completed in manner as herein after directed.

Where the residuum is insufficient, how the widow shall obtain her full share.

3. *And be it further enacted*, That when there is no residuum, or an insufficient one, and the jury shall be of opinion that the provision made for the widow of the personal estate by the will, is not equal in value to the part or proportion to which by the said act she is entitled, they shall assess so much as will make up the deficiency: and the sheriff shall make due return thereof to the next session or term of the court from which the writ is issued; and judgment shall be entered up against the executors or administrators, as the case may be, for the amount of such assessment, with such stay of execution as the court shall direct on consideration of the circumstances of such widow, and the estate of the deceased; and where there shall be no assets in the hands of the executors or administrators, and they have fully administered, such widow shall have and be entitled to a scire facias against the legatees, in like manner as is prescribed by law for creditors.

Widow chargeable for debts as a legatee, &c.

4. *And be it further enacted*, That the widow shall, in relation to all creditors, be considered as a legatee, and be chargeable for the whole amount of her husband's estate that may come to her hands, either as legatee, or in the manner by this act prescribed, and shall be bound to refund to the executors or administrators her ratea-

ble part of such debts or demands as may be afterwards sued for and recovered, or otherwise duly made appear against the estate of her deceased husband, in the same manner as other legatees, and by the same process.

Provided nevertheless, That nothing herein contained shall be construed to subject the dower of a widow in the lands of her deceased husband, nor such lands as may be devised to her by his will, if such lands do not exceed the quantity she would be entitled to by right of dower, to the payment of debts due from the estate of her husband, during the term of her life.

Proviso as to
dower.

5. And whereas it is at present extremely difficult for creditors to ascertain the property that has come to the hands of legatees and persons entitled to distributive shares of intestates estates, in order to charge them with debts, notwithstanding the provision made by law that the executors and administrators shall take bond for a proportional retribution: (a) For remedy whereof, *Be it enacted*, That executors and administrators shall at all times, with such bond, take and return a description list of the property by them delivered to the different legatees and persons entitled to distributive shares; and this list shall be filed by the clerks of the courts to which such returns are made, with the bonds respectively, among the records of the said courts.

(a See 1789, c. 308, s. 3.)
Executors, &c.
to return descriptive list of property with the bond to refund.

6. *And be it further enacted*, That all acts and clauses of acts, which come within the purview and meaning of this act, be, and the same are hereby repealed and made void.

Repealing
clause.

CHAP. 352.

An act to amend an act, entitled “An act directing the mode of proceeding against the real estate of deceased debtors, where the personal estate is insufficient for the payment of the debts.”

(See 1784, c. 226.)

Whereas the said act has directed no mode for creditors to proceed in where there shall be no heirs or devisees of the deceased, or where the judgment is obtained out of court:

1. *Be it enacted, &c.* That in all suits at law, where the executors or administrators of any deceased person shall plead fully administered, no assets, or not sufficient assets to satisfy the plaintiff's demand, and such plea shall be found in favour of the defendant, the plain-

Manner of proceeding against real estates in possession of the trustees of the university, &c.

tiff may proceed to ascertain his demand and to sign judgment; but before taking out execution against the real estate of such deceased debtor, if there be no heirs or devisees of the estate, upon affidavit made by the plaintiff, that to the best of his knowledge, the person deceased died seized of or entitled to certain real estate therein to be described, which real estate has since come to the possession of the president and trustees of the University of North-Carolina, a writ or writs of scire facias shall and may issue against the president and trustees aforesaid, to be served on their attornies or agents, or either of them, summoning them to shew cause why execution should not issue against the real estate for the amount of such judgment, or so much thereof as there may not be personal assets to satisfy. *Provided always*, That the said president and trustees shall, upon such scire facias, be let in to contest the merits of the original action; and if judgment shall pass against the said president and trustees, execution shall and may issue against the real estate of the deceased debtor for the amount of such judgment.

President, &c.
liable in like
manner as heirs,
&c.

2. *And be it further enacted*, That the president and trustees of the University of North-Carolina, shall be subject generally to the same process, judgment and execution, for the whole amount of the real estate of any debtor deceased that may come to their hands, that the heirs of such debtor, had he or she left heirs, would have been subject unto; and shall be answerable to creditors, out of the funds of the University, for the value of such lands as are by them sold, aliened, or made over for the use thereof.

Constables to le-
vy execution on
real estate if
there are no as-
sets, &c.

3. *And be it enacted*, That when it shall happen that an execution is in the hands of a constable, in consequence of judgment from any justice of the peace out of court, against the executors or administrators (as the case may be) of a deceased debtor, and such executors or administrators shall deny that they have assets to satisfy the same, it shall be the duty of the constable to levy the execution on the real estate of the deceased debtor, and make return of such his proceedings to the next ensuing county court; but before the said court shall make order for selling the same, a writ or writs of scire facias shall issue against the heirs and devisees of such deceased debtor; or in case there be no heirs or devisees, against the president and trustees of the Uni-

And scire facias
against heirs, or
against presi-
dent and trus-
tees of Univer-
sity.

versity of North-Carolina, under the same regulations and restrictions as herein before directed in case of judgment obtained in courts, summoning them to appear and shew cause why such real estate should not be sold.

CHAP. 353.

An act to prevent counsellors of state from being elected members of (See State Constitution, s. 28.
the General Assembly, and from taking a seat in either House, during the time for which they shall have been chosen or appointed to act as counsellors of state.

1. *Be it enacted, &c.* That from and after the passing of this act, no person or persons hereafter appointed as a counsellor or counsellors of state, accepting and qualifying to the same agreeably to the laws and constitution, shall be eligible in any wise whatever to a seat in either House of the General Assembly, during the time for which he or they were so appointed; any law, usage or custom to the contrary notwithstanding.

Counsellor of state ineligible as a member of Assembly.

CHAP. 354.

An act to amend an act, entitled, "An act declaring what fences are sufficient," and to provide a remedy for abuses so far as relates to the northeast side of the northwest branch of Cape-Fear River, in New-Hanover county. (See 1777, c. 121.)

Whereas it has been represented to this General Assembly, that many persons residing on the Brunswick side of the northwest branch of Cape-Fear, cultivate lands on the opposite side of the river without ever fencing or enclosing the same, by reason of which the inhabitants of that neighbourhood are under the necessity of keeping up their hogs, cattle and horses during the summer season, or of sustaining great loss by the havoc made amongst them if suffered to run at large, from the inevitable accident of their straying at times into these unfenced fields, and the destructive precautions taken by the proprietors of them to prevent injury to themselves, from whence much ill-will and animosity arises: For remedy whereof,

1. *Be it enacted, &c.* That all persons cultivating lands on the northeast side of the northwest branch of Cape- Persons cultivating certain

lands, not legally fenced, to forfeit 50l.

Indictable not to keep up fence according to 1777, c. 121.

(a The counties of Robeson, Columbus, Ashe, Richmond, Moore, Duplin, Carteret and Johnston are excepted by private act of 1818.)

Punishment on slaves killing stock.

Fear river, and neglecting to enclose the same with a sufficient and lawful fence, shall forfeit and pay for every crop so attempted to be made, the sum of fifty pounds; one half to the poor of the county, and the other half to the person suing for the same; to be recovered by action of debt before any jurisdiction having cognizance thereof; and that all persons neglecting during crop time to keep up and repair their fences in manner directed by an act passed at Newbern, in the year one thousand seven hundred and seventy-seven, shall be liable to be indicted in the court of the county wherein such fields shall be situated, and upon conviction of such neglect shall pay for each offence such fine as the court shall think fit to impose, not to exceed however the sum of fifty pounds; which fines shall go to the use of the poor of the county wherein the recovery shall have been had. (a) *Provided always*, That the concurring testimony of three indifferent witnesses shall be necessary to conviction.

2. *And be it further enacted*, That if any slave shall hereafter kill any cattle, hog or horse not belonging to his master, in any cultivated field which is not fenced at all, or which is not under sufficient and lawful fence, he or she shall at any time within six months after, be liable to be apprehended on warrant from any justice of the peace of the county, and on conviction before two of the neighbouring justices, shall be subject to and receive thirty-nine lashes on his or her bare back; and the owner or overseer of such slave so offending as aforesaid, shall on proof of the offence committed by such slave, pay such damages as shall be adjudged to have been sustained by the owner of the hog, horse or cattle so killed as aforesaid, by any jurisdiction having cognizance thereof.

CHAP. 355.

An act to annex part of Robeson to Cumberland county.

Whereas the annexing part of the county of Robeson to Cumberland, would tend to the ease and convenience of those who inhabit the same:

1. *Be it therefore enacted, &c.* That from and after the passing of this act, all that part of Robeson county in-

cluded in the following bounds, *to wit*, Beginning at the mouth of the Colecamp branch, thence up said branch to the main road from Lumberton to Fayetteville, thence a direct line to the bridge across Great-Rockfish, below Leggitt's plantation, thence up said Rockfish to the line of Cumberland county, be and the same is hereby annexed to, and shall be and remain a part of the county of Cumberland. *Provided*, That nothing herein contained shall be understood to prevent the sheriff of Robeson county from collecting all taxes now due in that part of the county which comes within the description of this act.

Part of Robeson added to Cumberland county.

CHAP. 356.

An act to confirm the proceedings of the county courts of the districts of Halifax and Edenton.

Whereas the alteration of the courts by the last session of the General Assembly at Fayetteville, has produced great confusion and irregularity in the sessions of the courts of pleas and quarter-sessions of the districts of Halifax and Edenton :

1. *Be it therefore enacted, &c.* That all the proceedings (Obsolete,) had in any of the courts of pleas and quarter-sessions of the districts aforesaid, since the last session of the General Assembly, are hereby confirmed and held valid ; any irregularity therein as to the time of holding the same, or law to the contrary, in any wise notwithstanding.

CHAP. 357.

An act for dividing the county of Dobbs.

Whereas it is necessary for the peace and good order of the inhabitants of the county of Dobbs, that the same should be divided :

1. *Be it therefore enacted, &c.* That from and after the passing of this act, the said county of Dobbs be divided, by running a direct line from where the dividing line between the said county of Dobbs and Wayne county crosses Bear creek, to the head of Wheat swamp, a little above Richard Hodges's, then down said Wheat swamp to William Killpatrick's, and from thence a di-

Glasgow and Lenoir counties erected.

(Glasgow altered to Greene by private act of 1799.

rect line to the Craven county line, opposite the mouth of Little Contentnea ; and that all that part of the late county of Dobbs lying south and southeast of the said lines, be held and deemed a distinct county, by the name of Lenoir ; and that all the remainder of the said late county of Dobbs, lying north and northeast of the aforesaid lines, be held and deemed a distinct county, by the name of Glasgow.

CHAP. 358.

An act forming the western parts of Burke and Rutherford counties into a separate and distinct county.

Whereas the western parts of Burke and Rutherford counties are very inconvenient to the court-houses in the said counties, which renders the attendance of jurors and witnesses very burthensome and expensive, and almost impossible in the winter season ; and in order to remedy the same,

Buncombe
county erected.

1. *Be it enacted, &c.* That all that part of the counties of Burke and Rutherford, circumscribed by the following lines, viz. Beginning on the extreme height of the Apalachian mountain, where the southern boundary of this state crosses the same, thence along the extreme height of said mountain to where the road from the head of Catawba river to Swannanoe crosses, then along the main ridge dividing the waters of South-Toe from those of Swannanoe unto the Great Black mountain, then along said mountain to the northeast end, then along the main ridge between South-Toe and Little-Crabtree to the mouth of said Crabtree Creek, then down Toe river aforesaid to where the same empties into the Nollichucky river, then down the said river to the extreme height of the Iron mountain and cession line, then along said cession line to the southern boundary, then along the said boundary to the beginning, is hereby erected into a separate and distinct county by the name of Buncombe.

CHAP. 359.

An act for dividing Caswell county.

1. *Be it enacted, &c.* That from and after the first day of February next, the county of Caswell shall be equally divided by a line already run, beginning on the Virginia line, and running from thence south to the line of Orange county.

2. *And be it further enacted,* That all that part of said county lying west of the line aforesaid, including the four western districts, shall continue and remain a distinct county by the name of Caswell; and that all that part lying east of said line including the four eastern districts, shall be erected into another distinct county by the name of Person.

Caswell county
divided and
Person erected.

Read three times, and ratified in General Assembly, }
the 9th day of January, A. D. 1792.

SIGNED BY

WM. LENOIR, S. S.

S. CABARRUS, S. H. C.

At a General Assembly, begun and held at Newbern, on the fifteenth day of November, in the year of our Lord one thousand seven hundred and ninety-two, and in the seventeenth year of the Independence of the said State: being the first session of the said Assembly.

Alexander Martin, Esquire, governor.

CHAP. 360.

An act to amend the revenue laws of this state, and to direct the mode in which those who hereafter shall complain of its judgments may obtain redress.

Whereas the due collection of the taxes and of the arrears due the state, is impeded by the manner in which injunctions and other process issuing from the courts of equity are obtained by public debtors:

1. *Be it therefore enacted, &c.* That in future no injunction bill or other process in equity, requiring a stay of any execution obtained against a citizen or citizens on the part of the state, shall be granted by the judges thereof, or any of them, until the complainant or complainants shall first produce a receipt from the public treasurer, shewing the actual payment and discharge in

Manner of obtaining injunctions against the state.

full of all such part of the judgment obtained as aforesaid as he or they by their bill of complaint shall not on oath be ready to declare is unjust.

Returnable to Hillsboro' superior court.

(a) See 1806, c. 693, s. 15.)

(Obsolete.)

All state civil causes to be transferred to Hillsboro' superior court.

(b See 1806, c. 693, s. 15.)

Duty of sheriffs on executions of the state.

(c Need not be in term time.

See 1802, c. 620, s. 2.)

Lands liable to be distrained for taxes, &c.

2. *And be it further enacted*, That all injunctions and other process which may hereafter be obtained as aforesaid in consequence of judgments to be had by the state, shall be returnable and returned to the court of equity for the district of Hillsborough, (a) and the hearing and decree in such cases shall be had in that court only.

3. *And be it further enacted*, That the judges of the superior courts of law and equity in this state, shall, upon motion of the attorney or solicitor general, order all injunctions and other causes of the nature aforesaid, wherein the state by its officers is a party, now depending in any of the several courts of equity in this state, together with all papers and documents in the said courts relating thereto, to be transferred and transmitted to the docket of the court of equity for the district of Hillsborough, (b) there to be proceeded on and finally determined.

4. *And be it further enacted*, That it shall be the duty of all sheriffs or coroners, upon receiving any execution at the instance of the state, to proceed to advertise the property levied on, for sale, on the second day of the court (c) of his county next preceding the time when his return is to be made, and shall expose the same for sale on the said day at some most public place near the court-house of the said county, and not more than ten rods therefrom, from the hour of ten of the clock in the morning until three in the afternoon, and shall publicly cry the same for at least one hour; and it is declared to be lawful for the said sheriff, and he is hereby required to strike off and make title to the said property so exposed, though there may not be more than one bidder therefor; and that if on the second day of the term there be no bidder, then he is to continue to expose the same from day to day during the term until a sale is made.

5. And whereas it is proper that real estates be subject to the payment of taxes when no personal property is found, and that the existing revenue laws of this state be amended: *Be it therefore enacted*, That for the future any person or persons failing to pay either by themselves or through others, the public taxes for which they may be liable, in due time and according to law,

and having no visible personal property on which the sheriff can distrain, but being possessed of lands within the county where such taxes became due and payable, it shall and may be lawful for the sheriff of such county, and he is hereby required to distrain on such lands, and to sell the same or so much thereof as shall be sufficient for the payment of the taxes due, and the costs of such sale; and shall convey the lands so sold to the purchaser or purchasers, which conveyance shall be good and valid in law; the lands so to be sold being first advertised for such length of time as is by law required in cases of execution.

6. *And be it further enacted*, That any person or persons who have for the year one thousand seven hundred and ninety-two returned, or who shall at any time hereafter return, as his, her or their taxable property, any land in this state, and shall sell and dispose of the same before the public taxes due thereon shall have been paid, and shall remove out of the county in which such lands shall have been so returned, leaving no personal property therein, the person or persons purchasing such lands shall be subject to the payment of all the taxes due thereon, and shall be proceeded against as if he had originally given in the same: (a) it being at all times understood that the sheriff making such sales shall be accountable to the owners of the lands for all monies which may come into his hands over and above the sums due for public taxes aforesaid.

Purchaser of lands liable for taxes due on same, &c.

(a See 1792, c. 492, s. 8.)
Sheriffs to account for the surplus monies.

CHAP. 361.

An act to amend an act, entitled "An act to compel certain officers therein mentioned to publish the application of the public monies and allowances for insolvents.

Whereas the before recited act does not direct in what manner settlements shall be made by the county trustees, and it may so happen that large sums of money may be paid into their hands, and it being but just that some regular mode of settlement should be pointed out, as well for the justification of the said trustees as for the benefit of those having just claims for county money:

1. *Be it therefore enacted*, &c. That at the first court in each respective county in this state, which shall be held after the first day of June next, the county trustees

County trustees to render their accounts, &c.

of their respective counties, shall make settlements with the court, in which they shall render an account of the whole of their receipts and expenditures, under the penalty of two hundred pounds, to be recovered by action of debt, and shall account in like manner and under the same penalty every year thereafter.

2. And whereas by the third section of the above recited act. (a) the wardens of the poor are required under a penalty of one hundred pounds, to publish an account of the monies received and expended for the support of the poor in each county, and it being represented to the present General Assembly that in many counties they fail to do the same: *Be it further enacted, &c.* That in such counties as the wardens of the poor shall hereafter fail to publish an account of the receipts and expenditures of monies for the support of the poor as required by the aforesaid act, the attorney or solicitor acting in behalf of the state in such county, is hereby required and enjoined to institute suit in the name of the chairman of the court for recovery of the penalty as directed by the said act.

Wardens to be prosecuted if they do not publish their accounts.

CHAP. 362.

An act to amend an act, entitled, "An act to prevent the stealing of slaves, or by violence, seduction or any other means taking or carrying away any slave or slaves the property of another, and for other purposes therein mentioned." (b)

(6 1779, c. 142.)

Whereas the above recited act hath been found insufficient to prevent the iniquitous practice of carrying and conveying slaves out of this state :

Penalty on masters of vessels for carrying off, &c. slaves.

1. *Be it enacted, &c.* That from and after the passing of this act, if any master or commander of any ship or vessel trading within this state, shall carry and convey out of the same on board of any such ship or vessel any negro or mulatto slave or slaves, the property of any citizen or citizens of this state, without the consent in writing of the owner or owners, his, her or their guardian or guardians, of such slave or slaves previously obtained ; or shall take and receive on board of any such vessel or ship, any such slave or slaves, or permit or suffer the same to be done with the intent and for the purpose of carrying and conveying such slave or slaves

out of this state, or shall wickedly and willingly conceal or permit to be concealed on board of any such ship or vessel any negro or mulatto slave or slaves, who shall or may hereafter abscond from his, her or their master or mistress, being citizens of this state, with the intent and for the purpose of enabling such slave or slaves to effect his, her or their escape out of this state, every such master or commander of any such ship or vessel so carrying and conveying, or so taking or receiving or concealing, or causing or permitting the same to be done with an intent as aforesaid, shall be deemed and taken to be guilty of felony, and shall suffer death as a felon without benefit of clergy.

CHAP. 363.

An act to amend the seventh section of an act, entitled, "An act to explain, amend and supply the deficiencies of an act, passed last Assembly at Hillsborough, entitled, An act to regulate the descent of real estates, to do away entails, to make provision for widows, to prevent frauds in the execution of last wills and testaments, and for directing how deeds of gift and bills of sale of slaves shall be executed, authenticated and perpetuated," passed at Newbern, in October, in the year one thousand seven hundred and eighty-four. (a)

(a 1784, c. 225, s. 7. See 1806, c. 701.)

1. *Be it enacted, &c.* That all sales of slaves *bona fide* made, and accompanied with the actual delivery of the slave or slaves to the purchaser, and which would have been held good and valid before the passing of the said recited act, shall be and the same are hereby declared good and valid without any bill of sale. (b)

Certain sales of slaves declared valid.

(b Must be in writing, see 1819, c. 1016.)

2. *Be it further enacted,* That when any transfer or conveyance of any slave or slaves shall be in writing, such writing, after being legally proved, shall be registered in the county where the purchaser (he being in actual possession of the slave or slaves so transferred or conveyed) shall reside; but if under any special agreement at the time of the sale, the seller shall remain in possession of the slave or slaves sold, then the writing transferring or conveying the same slave or slaves, shall be registered in the county where the vendor lives.

Registers of slaves where to be made.

3. *Be it further enacted,* That on all trials at law, where a written transfer or conveyance of a slave or slaves shall be introduced to support the title of either party, the due and fair execution of such writing shall

How bills of sale &c. to be proved on trial.

be proved by a witness subscribing and attesting the execution of such writing; but if such witness shall be dead or removed out of the state, then the probate and registration of such writing may be given in evidence.

CHAP. 364.

See 1715, c. 10,
and 1766, c. 79.

An act to amend an act, entitled, "An act concerning proving wills and granting letters of administration, and to prevent frauds in the management of intestate's estates;" and also to amend an act, entitled, "An act appointing the method of distributing intestate's estates."

Whereas by the said acts, the inhabitants of other states and foreigners from other countries, owing to their being frequently the greatest creditors of deceased persons, acquire the administration on deceased persons estates, to the great injury of other creditors residing within the state:

Greatest creditor in the state, after the widow, &c. entitled to administration.

1. *Be it therefore enacted, &c.* That in future in all such cases the greatest creditor residing within the state shall be entitled, after the widow and next of kin, to the administration on the estate of any deceased person.

Inventory to be given by a child, of property received in lifetime of intestate.

2. And whereas by the act for distributing the personal property of intestates, the intention thereof is that the distribution should be equal, although the said act doth not provide in what manner the heirs of the intestate, who had received any part or share of the intestate's estate in his or her lifetime, should give an account thereof: For remedy whereof, *Be it further enacted*, That in future where any person shall die intestate, who had in his or her lifetime given to or put in possession of any of his or her children, any personal property of what nature or kind soever, such child or children possessed as aforesaid, shall cause to be given to the administrator or manager of such estate, an inventory on oath, setting forth therein the particulars by him or her received of the intestate in his or her lifetime.

On failure, to be considered as having received a full share.

3. *And be it further enacted*, That in case any child or children who had in the lifetime of the intestate received a part of said estate, and shall refuse to give an inventory as aforesaid, such child or children shall be considered to have had and received his or her full share of the deceased's estate, and shall not be entitled to receive any further part or share thereof.

4. *And be it further enacted,* That all acts and clauses of acts heretofore passed, coming within the meaning and purview of this act, be and the same are hereby repealed and made void.

Repealing
clause.

CHAP. 365.

An act to amend the several processioning laws now in force in this state.

1. *Be it enacted, &c.* That at the first court held in each county of this state after the tenth day of May next, it shall be the duty of the courts respectively to divide their county into as many districts as to them shall appear most convenient for the purposes contained in this act.

Counties to be
divided into dis-
tricts.

(Obsolete.)

2. *And be it further enacted,* That it shall be the duty of the courts respectively to appoint some person capable of surveying, to procession the lands in each district of the county, for all such persons whose desire is to have their lands processioned.

Court to appoint
processioners.
(Time enlarged
—see 1804, c.
670.)

3. *And be it further enacted,* That the processioners appointed in pursuance of this act previous to entering on the execution of their office, shall take the following oath in open court or before some justice of the peace, “I, A. B. do solemnly swear or affirm, (as the case may be) that I will well and truly execute the duty and trust enjoined by the acts for processioning lands in this state, according to the best of my skill and ability, without favour or partiality to any person or persons whatsoever. So help me God.”

Oath of the pro-
cessioners.

(See 1816, c.
923.)

4. *And be it further enacted,* That where any processioner is appointed agreeable to the tenor of this act, and shall die, remove, refuse to act, or resign, it shall be the duty of the court to appoint a person to fill each vacancy as soon as possible after the same happens.

Court to fill va-
cancies.

5. *And be it further enacted,* That the proprietor of any land in this state shall cause to be given ten days' notice to all persons whose lands may be adjoining to any tract which he is about to procession; which notice shall be in writing, and a copy of the same delivered to the processioner, signed by the person who served such notice.

Notice to be
given.

(See 1799, c.
541.)

Certificate to be made out by processioner to be returned to Clerk.

6. *And be it further enacted*, That the processioner shall make out a certificate in words at full length for each tract of land by him processioned; which certificate shall contain the claimant's name, the quantity of acres, the corners and number of poles contained in each line, signed by such processioner, and the certificate made out as aforesaid, shall be returned to the clerk of the county where said lands lie, together with a copy of the several notices.

Who must record it, &c.

7. *And be it further enacted*, That the clerk upon receiving such certificate, shall record the same in a bound book specially kept for that purpose, and file the same, with the notices, in his office.

Fees of processioners and clerks.
(a Same fees as surveyors—see 1816, c. 923.)

8. *And be it further enacted*, That the processioners shall be entitled to half the fees directed by law for surveying lands. (a) and the clerks shall be entitled to receive two shillings for every certificate by them recorded as aforesaid; all of which fees shall be paid by the proprietor of the land processioned.

Repealing clause.

9. *And be it further enacted*, That all acts and clauses of acts which come within the purview and meaning of this act, be and the same are hereby repealed and made void.

CHAP. 366.

(See 1790, c. 319.)

An act to amend an act, entitled, "An act to prevent any person who now does, or who may hereafter hold any office, appointment or authority under the federal government, from being eligible to a seat in the General Assembly of this state; and to prevent any person from holding or exercising any office or appointment under the authority of the said state so long as they continue to hold or exercise any office or appointment under the authority of the United States."

Whereas in the above recited act, it is enacted that no citizen of this state shall hold at one and the same time, any office of trust, profit or emolument under the authority of the United States, and any office or authority, civil or military, judiciary or otherwise, under the authority of this state; which said act is by many of the officers of this state not attended to, by reason of no penalty being affixed to said act for a violation thereof: For remedy whereof,

1. *Be it enacted, &c.* That any officer, civil, military, judiciary or otherwise, who now does, or who hereafter may, hold any office or appointment from the authority of this state, and acting at the same time in any office, or under any appointment from the Congress of the United States, or any department thereof, at the same time, without resigning his state appointment, shall for every such offence forfeit and pay the sum of one hundred pounds; to be recovered in any court of record within this state, one half to the person suing for the same, the other half to be applied to the use of the state; any thing to the contrary notwithstanding.

Penalty on officers of the U. States acting as officers of this state.

(Amended, see 1796, c. 450 and 1811, c. 811.)

CHAP. 367.

An act to confirm the proceedings of the commissioners appointed under an act of the last General Assembly, entitled, "An act to carry into effect the ordinance of the Convention held at Hillsborough in July, one thousand seven hundred and eighty-eight, entitled, An ordinance for establishing a place for holding the future meetings of the General Assembly, and the place of residence of the chief officers of the state."

(See ordinance of the 4th August, 1788, c. 297, and acts of 1791, c. 337, and 1794, c. 420.)

Whereas a majority of the commissioners appointed by the General Assembly under the above recited act, to-wit, Frederick Hargett, Willie Jones, Joseph M'Dowell, Thomas Blount, William Johnston Dawson and James Martin, Esquires, in pursuance of the powers and authorities in them vested, did on the fourth Monday of April last, purchase of Joel Lane, Esq. one thousand acres of land for the use of the public, as appears by a deed from the said Joel Lane to Alexander Martin, Esq. Governor for the time being, for the use of the state, bearing date the fifth day of April, one thousand seven hundred and ninety-two, adjoining the tract whereon the said Joel Lane now lives, at Wake county court-house, and have caused to be laid off thereon the plan of a city containing four hundred acres of land, and comprehending, besides streets, two hundred and seventy-six lots of one acre each; which plan, together with their proceedings at large, they have reported to this General Assembly:

1. *Be it therefore enacted, &c.* That all and singular Proceedings of the said commissioners relative to the premises, be, and the same are hereby, recognized, confirmed and ratified.

firm'd and ratified, fully and completely, to all intents and purposes.

The plan, &c. of
the city ratified.

2. *And be it further enacted*, That the plan of a city so laid off, and reported to the present General Assembly by the commissioners aforesaid, shall be, and the same is hereby received, confirmed and ratified, by the name of the city of Raleigh; and the several streets represented in the plan, and the public square whereon the state-house is to be built, shall be called and forever known by the names given to them respectively by the commissioners aforesaid; which plan, together with the deed for the land purchased, with a plat thereof annexed, shall be forthwith recorded in the Secretary's office.

Names of the
public squares.

3. *And be it further enacted*, That the public square composed of number two hundred forty-six, two hundred forty-seven, two hundred sixty-two and two hundred sixty-three, shall be called and known by the name of Caswell square: That the public square composed of lots number two hundred thirty-eight, two hundred thirty-nine, two hundred fifty-four and two hundred fifty-five, shall be called and known by the name of Burke square: That the public square composed of lots number one hundred eighteen, one hundred nineteen, one hundred thirty-four and one hundred thirty-five, shall be called and known by the name of Nash square: And that the public square composed of lots number one hundred ten, one hundred eleven, one hundred twenty-six and one hundred twenty-seven, shall be called and known by the name of Moore square.

When the state-
house is com-
plete, the As-
sembly to meet
there, &c.

4. *And be it further enacted*, That as soon as the state-house now building on Union square in the said city of Raleigh is fit for the reception of the General Assembly, they shall adjourn to that place; from which time all the chief officers of the state, viz. the Treasurer, Secretary of State and Comptroller, shall hold their respective offices in the said city of Raleigh, which shall be thenceforward held, deemed and considered the permanent and unalterable seat of the government of the state of North-Carolina, and the place of residence of the chief officers of the state, any law or laws to the contrary notwithstanding.

CHAP. 368.

An act to amend the several acts of Assembly which respect the duties of the Comptroller of the public accounts of this state.

1. *Be it enacted, &c.* That the person who at any time hereafter shall be appointed comptroller, before entering on the duties of that appointment, shall give bond with sufficient security payable to the governor for the time being, for the use of the state, in the sum of ten thousand pounds, conditioned for the safe keeping of the public books of accounts, and all vouchers which may come into his possession, and for the faithful performance of his duty in office.

Comptroller to give bond.

(For salary, see 1786, c. 251, s. 1.)

2. *And be it further enacted,* That it shall be the duty of the comptroller to settle and report on all public accounts of the state, and to keep regular books and statements of the same; which he shall do in manner following, that is to say, he shall report the net amount which shall annually become due and payable from the respective revenue officers to the treasurer of the state, (to the end he may be informed of the same and enforce the due payment thereof,) first raising an account and debiting in his books each officer so reported against, whom he shall credit by the account of such receipts as they or any of them shall from time to time produce from the treasurer.

Comptroller to settle public accounts of the state, &c.

(See 1814, c. 877.)

3. *And be it further enacted,* That the treasurer shall, in all payments made to him, grant two receipts of the same tenor and date; one of which receipts shall be filed in the comptroller's office, and the other shall be endorsed by the comptroller, and continue with the person who has made the payment; without which endorsement of the comptroller, no receipt said to be given by the treasurer shall be operative.

Treasurer to grant two receipts, &c.

4. *And be it further enacted,* That the comptroller shall open an account with the treasurer, in which he shall debit him with the amount of each respective receipt which he shall have so placed as aforesaid to the credit of the accounting revenue officers, and credit him by the amount of such warrants and other cash claims as he shall produce and deliver. (a)

Comptroller to open an account with the treasurer, &c.

(a See 1787, c. 268, and 1793, c. 397.)

5. *And be it further enacted,* That it shall also be the duty of the comptroller to raise accounts and report in like manner against individuals who may become

And with individuals, &c.

chargeable on any of the warrants or vouchers hereafter paid him as though they were revenue officers, taking care not to blend such accounts and reports with those already raised or made, or which may be hereafter raised and made on vouchers in the comptroller's office.

Public monies recovered by law, how payable.

(a See 1793, c. 383, s. 9, and 1806, c. 693, s. 15.)

Comptroller to strike a balance annually and make report. (See 1795, c. 430, s. 1, and 1796, c. 449, s. 5.)

These regulations when to take effect.

(b See 1793, c. 397.)

Comptroller's election.

Repealing clause.

Comptroller's official to be received as evidence.

6. *And be it further enacted*, That all monies becoming payable to the public in the year one thousand seven hundred and ninety-three, and in each succeeding year, which shall not be paid in due time, but shall be sued for and recovered, (a) when received, shall be paid into the treasury by the clerk of the court in which the recovery shall be had; and the receipt for such payments shall be rendered to the comptroller, charged and filed by him in manner aforesaid.

7. *And be it also enacted*, That it shall be the duty of the comptroller, on the first day of November annually, to strike a balance against the treasurer, and all other public accountants in arrear; and report a statement of the same to the General Assembly, with whom he shall settle his own accounts for the warrants and other claims received of the public treasurer.

8. *And be it further enacted*, That the aforesaid regulations shall take effect on the first day of January next, and shall apply to the taxes of one thousand seven hundred and ninety-two, and all other public dues payable in the year one thousand seven hundred and ninety-three and thenceforward. (b)

9. *And be it further enacted*, That the comptroller shall be annually elected by the General Assembly, in the same manner that the public treasurer is elected.

10. *And be it further enacted*, That so much of the acts of Assembly of this state which come within the purview hereof, be and the same are repealed and made void.

11. *And be it further enacted*, That an official, signed by the comptroller, shall be received as testimony in the different courts of this state.

CHAP. 369.

An act for dividing the county of Mecklenburg.

1. *Be it enacted, &c.* That from and after the passing of this act, the county of Mecklenburg shall be divided

as follows, to-wit, beginning at where Iredell line crosses the east branch of Rocky River, then down the said branch to its junction with the west branch which comes from Colonel Osborne's, from thence to where the waggon road crosses Clerk's Creek, a little to the west of Captain Pickens's, thence to the barn of Adam Meek, sen. thence to a cluster of large rocks a little to the south-east of the great road from Colonel Smith's to Charlotte, not far distant from said Smith's, thence to James Stafford's, and from thence to the mouth of Clear Creek; and all that part of the county of Mecklenburg aforesaid lying west and south of said dividing line, shall continue and remain a distinct county by the name of Mecklenburg; and all that part of the said county lying north and east of said line, shall be erected into a new and distinct county by the name of Cabarrus.

Division of
Mecklenburg
county, &c

Cabarrus coun-
ty erected.

2. *And be it further enacted,* That James Harris, Joseph Moore Carpenter, William Orr, George Alexander and Zacheus Wilson, Esquires, or a majority of them, be, and are hereby appointed commissioners to superintend the running the dividing line, and shall cause the same to be entered of record in each of the said counties of Mecklenburg and Cabarrus; and the said commissioners are hereby authorised to employ two surveyors, one of which may be resident in each of the counties aforesaid.

Commissioners
to run the di-
viding line, &c.

(Obsolete.)

3. *And be it further enacted,* That Paul Barringer, John Lepard, Joseph Shim, Daniel Jarrett, Alexander Ferguson, James Bradshaw, James Aairis, sen. Zacheus Wilson, Archibald Houston, Benjamin Patton and Robert Smith, are hereby appointed commissioners to fix on the most central place in said county for the purpose of erecting a court-house, prison and stocks.

Commissioners
to fix on the
place for a
court-house.

(Obsolete.)

4. *And be it further enacted,* That Archibald Houston, Martin Phifer, John Means, Daniel Jarrett and George Masters, or a majority of them, are hereby authorised and empowered to purchase fifty acres of land, and contract with workmen for the purpose of erecting the necessary buildings in said county, as soon as the commissioners shall fix on the centre.

Commissioners
to purchase
land, &c.

(Obsolete.)

CHAP. 370.

(See 1793, c. 401, 1815, c. 897, and 1796, c. 463.) An act to establish a company for the purpose of facilitating the navigation of Cape-Fear River, from Fayetteville up to the confluence of Haw and Deep Rivers.

Whereas navigation is the life and main spring of commerce, and it being represented to this General Assembly that it is practicable by means of canals, locks, et cetera, to render safe and easy the navigation of Cape-Fear River, from the town of Fayetteville up to the confluence of Haw and Deep Rivers, greatly to the benefit of the inhabitants of the western part of this state; the point where the junction of the two rivers is formed, being within twenty-five miles of the permanent seat of government, within eighteen miles of the place appointed for the University, within thirty-five miles from the town of Hillsborough, and within nine miles of Pittsborough:

Cape-Fear Company incorporated.

1. *Therefore be it enacted, &c.* That the following persons, James Porterfield, Philemon Hodges, William Rand, John Porterfield, Abner Chapman, William Hays, Britain Sanders, John Macon, Thomas Stokes, Ambrose Ramsey, Zachariah Harman, John Ferrington, William Smith, Jonathan Lindley, James Beeman, William M'Cawley, Joseph Stewart and Thomas H. Perkins, are hereby appointed, incorporated and styled the Cape Fear Company, with full power to receive subscriptions, or donations from such public spirited persons as may be inclined to aid this laudable undertaking, and dispose thereof as they may think best for the purposes aforesaid.

May sue, &c.

2. *Be it further enacted,* That the said company by the name and style aforesaid, may sue and be sued, implead and be impleaded in any court in this state, and make such rules for their own government as they shall think proper, not inconsistent with the constitution or laws of this state.

Penalty for damage done their works, &c.

3. *And be it further enacted,* That if any persons shall wilfully cut, break down, damage or destroy any bank, or other work to be erected or made for the purpose of the said navigation, or do any act or thing designedly, to injure the said navigation, such person shall be answerable to the said company for double the damages sustained thereby.

4. *And be it further enacted*, That this act shall be deemed and taken a public act, and judicially taken notice of as such, and liberally construed for carrying the purposes aforesaid into effect.

This act to be deemed a public act, &c.

5. *And be it further enacted*, That in case of removal, death, disqualification, resignation, or refusal to act of any of the commissioners by this act appointed, the surviving or acting commissioners may appoint others in their stead to fill such vacancy.

Vacancies of commissioners how filled.

6. *And be it further enacted*, That the said commissioners shall convene at the house of Mr. Ragland, near the Great Falls, on the last Thursday in May next, then and there to appoint their own officers, and make such rules and regulations as to them shall seem necessary.

Meeting of commissioners, &c.

CHAP. 371.

An act to alter and amend the several acts for regulating the pilotage, (See 1783, c. 194, and the acts there referred to.) and facilitating the navigation of Cape-Fear River, and to appropriate the materials and monies not yet used, which were collected under the authority of the state, for the purpose of building a Light-House on Baldhead.

Whereas it hath been made appear to this General Assembly, that the number of nine commissioners is fully competent to the regulation of said pilotage and navigation :

1. *Be it enacted, &c.* That from and after the passing of this act, there shall be but nine commissioners of pilotage for Cape-Fear river, who shall be vested with all and singular the powers and authorities with which the former number of thirteen were vested with, by the several acts of Assembly for that purpose made. And whereas, by removal or otherwise, there are at present but six commissioners of pilotage for said river :

Commissioners of Cape-Fear pilotage, their number and power, &c.

2. *Be it enacted*, That James Walker, Henry Urquhart and William Nutt be, and they are hereby appointed commissioners for regulating the pilotage and navigation of Cape-Fear river ; vested with the same powers and authorities as the remaining commissioners.

Commissioners named, &c.

3. *And be it further enacted*, That in case of death, refusal to act, or removal from New-Hanover and Brunswick counties, or other disability of any of the present commissioners, it shall and may be lawful for

Vacancies of the commissioners how filled.

the remaining commissioners, or a majority of them, and they are hereby directed to elect another, or others in the room of such commissioner, so that the residence of such new elected commissioner or commissioners, be in the county of Brunswick or New-Hanover; which said commissioner or commissioners shall be vested with the same powers and authorities as other commissioners.

Repealing
clause.

4. *And be it further enacted*, That all laws coming within the purview and meaning of this act, be, and they are hereby repealed.

CHAP. 372.

An act to amend an act, passed at Hillsborough in the year one thousand seven hundred and eighty-four, entitled, "An act for ascertaining the fees of the pilots at Occacock, Beaufort and Bogue inlets; and for appointing commissioners of navigation for Bogue inlet.(a)

(a See 1784, c.
208.)

Whereas three of the commissioners appointed by the said act for Bogue inlet, have departed this life, and the vacancies have not been filled up :

Commissioners
of Bogue inlet
named, &c.

1. *Be it enacted, &c.* That in addition to the surviving commissioners, William Jones, Kilby Jones and William Ferrends, be, and they are hereby appointed commissioners for the navigation of Bogue inlet, and the port of Swansborough, and they are hereby vested with all the powers that have been heretofore given, or exercised by any commissioners of said port and inlet.

Fees of pilots,
&c.

2. And whereas the fees heretofore allowed to the pilots of said inlet are found insufficient: *Be it therefore enacted*, That it shall and may be lawful for the said pilots hereafter, to receive for bringing every vessel into the said inlet, drawing less than seven feet, from the outside of the bar to anchorage before the town, or the customary place in Hill's channel, five shillings per foot; and for every vessel drawing more than seven feet, shall be allowed seven shillings, and that the same fees be allowed to pilots for pilotage outwards as inwards.

Repealing
clause.

3. *And be it further enacted*, That all laws, or clauses of laws, so far as they come within the meaning and purview of this act, be and the same are hereby repealed.

CHAP. 373.

An act to amend an act, entitled, "An act to cut a navigable canal from the waters of Pasquotank river in this state, to the waters of Elizabeth river in the state of Virginia."^(a) (a See 1790, c. 332.)

Whereas the Legislature of the state of Virginia did, on the twenty-fifth day of November, one thousand seven hundred and ninety, pass an act amending the aforesaid law, mutually entered into by compact between the two states :

1. *Be it enacted, &c.* That the tolls allowed to be demanded and received by the before recited act, are granted and shall be paid, on condition only, that the said Dismal Swamp Canal Company shall make the canal and locks of sufficient width for vessels that are fifteen feet broad, and of sufficient depth to be navigated in dry seasons by vessels drawing three feet water, from Deep creek, near Tucker's mill, in Virginia, to the highest good navigation for vessels of the aforesaid draft in Pasquotank river in this state ; and that each of the said locks shall be ninety feet in length, and the causeways fifteen feet in breadth. Width &c. of the locks, &c.

2. *And be it further enacted,* That every part of the before recited act which comes within the meaning and purview of this act, and every part thereof concerning the regulation of commerce, so far as the same is now vested in the government of the United States, shall be, and the same are hereby repealed. Repealing clause.

3. *And be it further enacted,* That the said act passed by the legislature of the state of Virginia, on the twenty-fifth day of November, one thousand seven hundred and ninety, is hereby confirmed, and declared to be firm and valid, agreeable to the compact entered into between the two states, and shall in no respect be altered or amended by this state without the consent of the state of Virginia. Act of Virginia confirmed, &c.

4. *And be it further enacted,* That the said act as passed by the state of Virginia, be printed by the Public Printer of this state, and incorporated with the laws of this session as a part thereof. (See post, c. 377.)

CHAP. 374.

An act to annex part of Washington to Wilkes county.

Whereas a part of Washington county was by the cession act retained in this state, and although remaining in the said state, the inhabitants thereof are deprived of the benefit of the laws and government of the same, for want of being annexed to some other county: For remedy whereof,

Part of Washington county
added to Wilkes

1. *Be it enacted, &c.* That from and after the passing of this act, Wilkes county shall be extended in the following manner, to wit, Beginning at the most southwardly part of Wilkes county line on Burke county line, and running due west to the dividing ridge between the waters of Watauga and Doe rivers, then along the extreme height of said ridge to the line of the ceded territory, then along the said line to the Virginia line, and along the Virginia line to the old line of Wilkes county; and that all the land north and east of the aforesaid line shall be, and the same is hereby annexed to the said county of Wilkes; any law, custom or usage to the contrary notwithstanding.

CHAP. 375.

An act for the better regulation of the town of Rockford, in the county of Surry, and for adding part of Wilkes to Surry county.

[All, except the third section, unnecessary to be inserted.]

Part of Wilkes
added to Surry
county,

3. And whereas the inhabitants of Wilkes county, living on the head of Mitchell's and Fishe's rivers, are much more convenient to the court-house in the county of Surry than to Wilkes court-house, and have requested their representatives in General Assembly to have them annexed to the county of Surry, *Be it therefore enacted, &c.* That from and after the passing of this act, that all that part of Wilkes county that lies east of the following line, shall be, and the same is hereby annexed to the county of Surry; beginning on the line that divides Wilkes and Surry counties, where the ridge that divides the waters of Mitchell's river from those of Elkin, thence along the said ridge to the extreme height of the Appalachian mountain, then along the extreme height of the said mountain to the Virginia line.

CHAP. 376.

An act to authorise Thomas Neale and John Hall, Esquires, securities of Josiah Richardson, deceased, late sheriff of Brunswick county, to collect the tax due from certain persons in said county; and to empower sheriffs and collectors of public taxes to distrain for the same after such taxes become due.

[*That part of the act which is private and local is omitted.*]

And whereas doubts have arisen, whether sheriffs, their deputies, or collectors of taxes, have power to distrain after the time for which they were appointed is expired: *Be it therefore enacted, &c.* That all persons who have within three years heretofore been authorised to receive public taxes, and who have failed to collect the full amount for which they are accountable; and all persons who hereafter may be authorised to receive public taxes, be, and they are hereby severally empowered to collect, and distrain for the same, in as full and ample a manner as they could have done when the said taxes became due; provided that they, and each of them, collect or distrain for the same within one year after the passing of this act, or within one year after such sheriff or collector is accountable for said taxes; and provided further, that nothing herein contained shall be construed to prevent the treasurer recovering against sheriffs for taxes, or the sheriffs against collectors, within the time heretofore appointed by law.

Time allowed
sheriffs, &c. to
distrain for taxes.

Read three times, and ratified in General Assembly, }
this 31st day of December, A. D. 1792. }

WM. LENOIR, S. S.

S. CABARRUS, S. H. C.

Copy.—J. GLASGOW, Secretary. \

CHAP. 377.

An act to amend an act, entitled “An act for cutting a navigable canal from the waters of Elizabeth River in this state, to the waters of Pasquotank River in the state of North-Carolina. [Passed the 25th November, 1790.]

1. *Be it enacted, &c.* That the books directed to be opened for receiving and entering subscriptions in the towns of Norfolk, Portsmouth, Suffolk, Petersburg, Act of the Virginia legislature.

Books to be opened for subscriptions.

Richmond, Fredericksburg and Alexandria, by the act, entitled, "An act for cutting a navigable canal from the waters of Elizabeth River in this state, to the waters of Pasquotank River in the state of North-Carolina," shall be opened for receiving subscriptions at the said places, and under the management of the persons mentioned in the said recited act; and in the city of Williamsburg, under the management of Robert Andrews, in the month of May next after the time when this act shall be in force, and continue open until the first day of September following; and on the third Thursday of the said month of September, there shall be a general meeting of the subscribers at the town of Halifax, in the state of North-Carolina; of which meeting notice shall be given by the said managers, or any three of them, in the gazettes of both the aforesaid states, at least one month next before the said meeting; and such meeting shall and may be continued, and the business of it conducted in the manner prescribed for the meeting appointed by the said recited act.

Dimensions of locks and canal.

2. *And it is hereby declared and enacted*, That the tolls allowed to be demanded and received by the before recited act, are granted and shall be paid on condition only that the said Dismal Swamp Company shall make the canal and locks of sufficient width for vessels that are fifteen feet broad, and of sufficient depth to be navigated in any seasons, by vessels drawing three feet water, from Deep Creek near Tucker's mill in Virginia, to the highest good navigation for vessels of the aforesaid draft in Pasquotank River in North-Carolina; and that each of the locks shall be ninety feet in length, and the causeways fifteen feet in breadth.

Repealing clause.

3. *And be it further enacted*, That every act or part of an act of Assembly which comes within the purview and meaning of this act, and every part of the before recited act concerning the regulation of commerce, so far as the same is now vested in the government of the United States, shall be and the same are hereby repealed.

Condition that North-Carolina pass a similar act.

4. And so soon as any act similar to the before recited act as amended by this act, shall have been passed by the state of North-Carolina, the before recited act as amended by this act shall be in force, and shall never be repealed or altered by the legislature of this state, without the consent of the state of North-Carolina.

At a General Assembly, begun and held at Fayetteville, on the second day of December, in the year of our Lord one thousand seven hundred and ninety-three, and in the eighteenth year of the Independence of the said state; being the first session of the said Assembly. Richard D. Spaight, Esq. Governor.

CHAP. 378.

An act to carry into effect an act of Congress, entitled, "An act more effectually to provide for the national defence, by establishing a uniform militia throughout the United States; also to amend an act, passed at Fayetteville, in the year one thousand seven hundred and eighty-six, entitled, "An act for establishing a militia in this state." (See 1801, c. 597 and 598, and 1806, c. 703.)

1. *Be it enacted, &c.* That in order to carry into effect the above recited act of Congress, the militia of this state be arranged into brigades and divisions in the following manner, that is to say, the district of Edenton, the first brigade; the district of Newbern, the second brigade; the district of Wilmington, the third brigade; the district of Fayetteville, the fourth brigade; the district of Halifax, the fifth brigade; the district of Hillsborough, the sixth brigade; the counties of Rowan, Montgomery, Cabarrus, Mecklenberg and Iredell, shall compose the seventh brigade; and the counties of Rockingham, Stokes, Surry and Guilford, shall compose the eighth brigade; and the district of Morgan, the ninth brigade; and that the first and second brigades shall compose the first division; that the third and fourth brigades compose the second division; that the fifth and sixth brigades compose the third division; and that the seventh, eighth and ninth brigades shall compose the fourth division. Militia of this state arranged into brigades and divisions.

2. *And be it further enacted,* That the several regiments in each brigade shall be numbered according to the dates of the commission of the colonels or officers commanding them respectively, at the end of the present session. Regiments to be numbered.

[*The remainder of this act not necessary to be retained.*]

CHAP. 379.

An act to prevent the introduction and communication of contagious diseases.

Whereas the suffering vessels to come into any of the ports of this state, with any person or persons on board infected with any contagious disorder, or coming (Modified by 1802, c. 642.)

from any place where any such disorder prevails, would greatly endanger the health and lives of the inhabitants of this state ;

Commissioners of navigation &c. to meet and appoint a place for vessels infected to perform quarantine.

Penalty on master and pilot of any vessel having on board an infectious disease, not anchoring at the place appointed, &c.

Crew to be examined, &c.

To obey the orders of the commissioners, &c.

Penalty on pilot and master not giving the necessary notice.

1. *Be it therefore enacted, &c.* That on the second Monday in April, one thousand seven hundred and ninety-four, or as soon thereafter as may be, the commissioners of navigation in the respective ports and inlets of this state, and where there are no commissioners, any three justices of the peace, convenient to said ports or inlets, shall meet together and appoint such place or places as they may think proper for vessels to perform quarantine ; and when a vessel shall arrive at any of the said ports or inlets having an infectious distemper on board, or which came from any place that was at the time of her sailing, or shortly before, infected with any malignant disorder, the master and pilot of the vessel shall anchor her at the place so appointed, under the penalty of five hundred pounds, to be paid by the said master or pilot, and give immediate information thereof to the commissioners of navigation, or where there are no commissioners, to the nearest justice of the peace, who with two others to be summoned by him, or any three of the commissioners aforesaid, shall thereupon cause such vessel and her crew to be examined by at least one experienced physician, where to be had, upon whose report in writing, which said physician is required to make, and on other information they may receive, it shall and may be lawful for any three of such commissioners, and where no commissioners, any three neighbouring justices, to order and command the master of the vessel, crew and passengers to perform quarantine, as by them shall be deemed most proper and requisite to check or prevent any infectious distemper from spreading in this state ; and every person on board such vessel directed to perform quarantine, shall from time to time during such quarantine, obey all and every order given by the authority of the said commissioners or justices respecting the victualling, purifying and cleansing of such vessel, and all persons and articles on board, and the intercourse of the said persons with the inhabitants of this state, the receiving any person on board or putting them on shore. And if the said pilot or master shall neglect or refuse to give such information as above required, the pilot for such neglect or refusal shall forfeit and pay the sum of fifty pounds ; and the master,

for the like neglect or refusal, shall forfeit and pay the sum of one hundred pounds. And in case the master of any vessel so ordered to perform quarantine, shall refuse to comply with or fail to fulfil the orders of the commissioners, or justices of the peace, where there are no commissioners, for performing quarantine with his vessel as aforesaid, he shall forfeit and pay the sum of one hundred pounds for each day he shall fail to proceed and perform the quarantine ordered by the commissioners or justices of the peace, as in this act directed; (a) for which forfeiture or forfeitures the property of the said captain, with the vessel and cargo, shall be liable; *provided* it shall appear that the breach of the orders of the commissioners or justices as aforesaid, was by the consent of the owner or consignee; but if the owner or consignee did not consent, then and in that case the master of such vessel only shall be liable, to be recovered and applied in such manner as herein after directed.

On the master for not fulfilling the orders of the commissioners.

(a See 1817, c. 946.) Captain, vessel and cargo, liable for the forfeitures.

Proviso.

2. *And be it further enacted*, That when any vessel shall be directed to perform quarantine as aforesaid, and any seaman or passenger shall, contrary to the order and direction of the commissioners or justices of the peace as aforesaid, leave the said vessel and land on any other place than the said commissioners or justices shall allow of, each and every person so offending, shall forfeit and pay the sum of one hundred pounds for each and every offence; and where the person or persons so offending shall not be able to pay the said forfeiture, and it can be made appear that they left the vessel with the master's consent, either express or implied, the said master shall be liable to pay the said penalty of one hundred pounds, for each and every such offence of any of his passengers or seamen.

Penalty on seamen or passengers for leaving the vessel contrary to order of the commissioners, &c.

3. *And be it further enacted*, That when any vessel shall be as aforementioned directed to perform quarantine, and any person or persons knowing of such order, either by the information of the master or otherwise, shall go on board of such vessel or vessels, each and every person so going on board shall forfeit and pay the sum of fifty pounds. And if any person or persons shall be permitted by the master of such vessel to come on board without informing him or them of the order and directions of the commissioners or justices of the peace, the said master shall be liable to pay the sum of one hundred pounds for each and every person so offend-

What penalties persons liable to for going on board, &c.

ing, and the sum of two hundred pounds for suffering any person so on board to depart his vessel without leave of the commissioners or justices aforesaid. And the said commissioners or justices are hereby empowered to order every person who shall go on board any such vessel, to remain there for such length of time as they may think proper, and if they disobey such order they shall be liable to pay the sum of fifty pounds.

Commissioners' power to have apprehended any person leaving a vessel performing quarantine, &c.

4. *And be it further enacted*, That the commissioners or justices aforesaid shall, and they or a majority of them respectively are hereby empowered, to issue their warrant to any sheriff or other lawful officer, commanding him to take the body of any person that may have left any vessel ordered as aforesaid to ride quarantine, and carry or cause to be carried him or her on board of said vessel. And the said officer is hereby empowered to summon such persons to assist him in the execution of said warrant as he may think fit.

Penalty for landing goods, &c. contrary to orders.

5. *And be it further enacted*, That if any master of a vessel ordered to ride quarantine, shall convey, cause, or permit to be conveyed any article or articles of goods, wares and merchandize from on board his vessel, on any other land or into any other boat or vessel than the said commissioners or justices shall authorise, he shall be liable to pay the sum of one hundred pounds for each and every offence. And any other person so conveying or causing to be conveyed any article or articles as above mentioned, shall be liable to the like penalty in like manner.

Master to give a state of the health of the crew, &c. if required.

6. *And be it further enacted*, That the said commissioners or justices may, whenever they think proper, require from any master of a vessel, on his arrival in this state, to declare on oath the state of the health of himself, crew and passengers, and of the place from whence he came. And if any master shall give a false declaration, or any physician shall wilfully give a false certificate of the health of the persons on board any vessel so entitled, he shall forfeit and pay the sum of one thousand pounds.

Vessel to be furnished with provisions, &c.

7. *And be it further enacted*, That the commissioners or justices are hereby empowered and directed to furnish any vessel ordered to ride quarantine as aforesaid with a sufficient quantity of good wholesome provisions, for the expense of which the master, vessel and cargo shall be liable.

8. *And be it further enacted*, That all fines, penalties and forfeitures herein mentioned, shall be recovered by action of debt in any court having cognizance thereof, one half to the informer, the other half to be applied to the repairing public wharves, docks, and clearing the channel of any port where the same shall be recovered. *Provided nevertheless*, That this act shall not commence and be in force until the first day of April next.

Fines how recoverable.

When this act in force.

9. *And be it further enacted*, That all laws, clauses and parts of laws heretofore made, that come within the meaning and purview of this act, be and the same are hereby repealed and made void.

Repealing clause.

CHAP. 380.

An act to alter and amend the act for the benefit of insolvent debtors. (See 1773, c. 100.)

Whereas by the first and seventh sections of an act of the General Assembly of North-Carolina, entitled “An act for the relief of insolvent debtors, with respect to the imprisonment of their persons,” it is provided that debts and judgments against persons having taken the benefit of the said act shall be held to be fully satisfied, and that no execution whatever shall by virtue thereof issue against any estate which such insolvent debtor or debtors may afterwards acquire: And whereas it hath been experienced that the said sections are frequently productive of inducing fraudulent conveyances, to the injury of just creditors, and appear to this General Assembly against good morals:

1. *Be it therefore enacted, &c.* That the aforesaid parts of the recited sections of the act aforesaid shall be and are hereby repealed and made void, so far as the said debts and judgments are by said act declared, discharged and satisfied, and that from and after the passing of this act, execution may issue against any estate afterwards acquired by such insolvent debtor or debtors taking the benefit of said act, any law, custom or usage to the contrary notwithstanding.

Part of former act repealed.

Execution may issue against any estate afterwards acquired by an insolvent debtor.

CHAP. 381.

An act to extend the right of trial by jury to slaves.

In what cases
slaves are enti-
tled to trial by
jury, &c.

(a See 1816, c.
912, and 1818,
c. 972.)

(b See 1794, c.
412, and 1796,
c. 467.)

1. *Be it enacted, &c.* That in all cases hereafter hap-
pening, where any slave shall be accused of an offence,
the punishment whereof shall extend to life, (a) limb, or
member, such slave shall be entitled to trial by jury, (b)
on oath, consisting of twelve good and lawful men, own-
ers of slaves, in a summary way, and in open court of
the county wherein such offence was committed. *Pro-
vided nevertheless*, That if the court of the county shall
not meet within fifteen days from the time of commit-
ment, the sheriff of the county shall and may summon
three justices of the peace of the said county, and a jury
of good and lawful men owners of slaves, who shall
have as full and ample power and authority to try and
pass sentence on any slave accused and brought to trial
before them, as the county court might or could have by
virtue of this act. *And provided always*, That the said
jury and three justices shall not be connected with the
owner of such slave, or the prosecutor, either by affinity
or consanguinity.

Owner to have
notice of his tri-
al.

2. *And be it further enacted*, That when a slave shall
be apprehended for any offence, the punishment whereof
may affect life, member, or limb, it shall be the duty of
the sheriff, and he is hereby required to serve the owner
of such slave, if known, with notice of trial ten days
previous thereto (which notice shall be proved to the
court) in order that the owner may have an opportunity
of defending the said slave; and the costs of said no-
tice, and all other costs attending the trial of any slave
so apprehended, where the owner or owners shall be
known, shall be paid by the said owner or owners, *pro-
vided* the said slave, if a freeman, would be liable to the
payment thereof. And in case of refusal to pay the
same, process may issue from the clerk of the court to
compel payment, in the same manner as for other costs.

To pay all costs,
&c.

How recovered.

Slave to be al-
lowed counsel
by the court,
where his mas-
ter is unknown,
&c.

3. *And be it further enacted*, That when the owner of
any slave to be tried by virtue of this act, shall not be
known, or cannot be discovered or ascertained, or shall
reside out of this state, it shall and may be lawful for
the court, and they are hereby authorised and required,
to appoint counsel to appear for and in behalf of the
prisoner, who shall be allowed the same fees as the at-

torney for the state is allowed for criminal prosecutions. After which they may proceed to trial in the same manner as if the owner had been notified agreeable to the directions of this act, in which case the fees for the counsel, clerk and sheriff, shall be paid by the county in which the court is held in the same manner as other county charges.

CHAP. 382.

An act more effectually to provide against corrupt elections of members of the General Assembly and sheriffs, and to direct when justices shall qualify.

1. *Be it enacted, &c.* That no person who heretofore hath been, or hereafter may be receiver of public money, and shall not have fully accounted for and paid into the treasury all such sums for which he may be accountable or liable before the day of the annual election, shall be eligible, or take a seat in either house of the General Assembly. (a) And any person so indebted offering himself a candidate, or if elected without offering presuming to appear at any Assembly to claim his seat therein, shall for each and every offence forfeit and pay the sum of one hundred pounds, to be recovered by action of debt, one-half to the use of the informer, and the other half to the use of the state.

Persons declared ineligible to a seat in the General Assembly.

(a See state constitution, s. 25, p. 49.)
Penalty for offering, &c.

2. *And be it further enacted,* That if any person shall by force and violence break up any election, by assaulting the officers thereof, or depriving them of the ballot boxes, such persons, their aiders and abettors, shall be adjudged guilty of a misdemeanor, and upon conviction shall suffer three months confinement in gaol, there to remain without bail or mainprize, and until he pay such fine as the court before whom such conviction is made shall judge, not exceeding fifty pounds, and all costs and charges.

Penalty on persons attempting to destroy an election by force, &c.

3. *And be it further enacted,* That no justice of the peace, being a candidate for the office of a sheriff (b) of his county, shall be permitted to vote or sit on the bench at the election; and if any justice of the peace shall hereafter presume to sit on the bench or vote on such election, he shall forfeit and pay for every offence the sum of fifty pounds, to be recovered by action of debt, one-half to the person suing for the same, the other half

Justice giving his vote, &c. to elect himself sheriff, what penalty liable to, &c.

(b See 1794, c. 418.)

to the use of the county; and his vote shall not be counted.

Appointment of a justice removing out of the county declared void, &c.

Penalty for acting after removal.

When justices are to qualify, &c.

4. *And be it further enacted*, That where any justice of the peace hath removed himself, or shall hereafter remove himself out of the county for which he was appointed, into any other county of the state, and shall not return within twelve months to reside therein, such appointment shall be null and void; and in case any such justice shall in any manner presume to act in the county for which he was appointed after such removal, unless re-appointed by the General Assembly, he shall forfeit and pay for every offence the sum of fifty pounds, to be recovered by action of debt, and applied one-half to the use of the state, and the other half to the use of person suing for the same.

5. *And be it further enacted*, That any person heretofore, or who shall hereafter be appointed a justice of the peace in any county within this state, and shall not qualify within twelve months after such appointment, such person shall not be allowed or admitted to qualify after the time above mentioned is elapsed, unless re-appointed by the General Assembly.

CHAP. 383.

(a See 1808, c. 750, and 1809, c. 763, s. 2.) An act for the more speedy and effectual collection of the arrears of taxes, and of other monies and certificates now due, or which shall hereafter become due and payable to the state.(a)

Collectors of arrears to be appointed. To give bond and security, &c.

Their duty.

1. *Be it enacted, &c.* That two or more persons be appointed by the treasurer, who shall be called and known by the name of collectors of arrears, give bond with sufficient security in the sum of twenty thousand pounds each, payable to the governor for the time being, for the use of the state, conditioned for the faithful accounting for and payment of all monies and certificates due or becoming due to the state, which shall come into their hands or be collected by either of them in consequence of their appointment as aforesaid, who shall have ridings assigned them by the treasurer, and whose duty it shall be to receive and take charge of all executions issuing on judgments obtained or which shall be hereafter obtained by the treasurer in behalf of the state, to carry or cause them to be carried to the counties

within their respective ridings where the debtors or their securities reside, to see that they are properly levied, by shewing or pointing out to the sheriffs the property deemed liable to be levied on, be the same in whose possession it may, and by enquiring into and pursuing all legal means of detection and recovery in every case of suggested fraud: and it shall also be the duty of the collectors to attend all such sales in their respective ridings, and to enforce the same: they shall likewise take charge of the net amount of all monies and certificates arising from the sales, and pay them into the public treasury, first endorsing a receipt on the back of the execution expressing in words written at full length the amount of the same, which execution shall be left with the sheriff, and shall by him be returned to the clerk of the court from whence it issued, on the first or second day of the term next following the day on which such sale shall have been made as aforesaid; and for their services therein they shall severally be entitled to have and receive a commission of eight per centum on the amount of the cash and certificates by them paid into the treasury, which shall be deemed a compensation in full. (a)

And pay.

(a See 1802, c. 620, s. 1.)

2. *And be it further enacted.* That each of the collectors of arrears so appointed, shall return to and file with the public treasurer a minute and accurate written account or statement on oath, containing all their deeds and transactions in regard to the collecting arrears of monies and certificates as aforesaid; which account or statement shall be by the treasurer laid before the General Assembly, at their annual meetings: And each of the said collectors shall make return of the statement aforesaid, settle his account with the comptroller, (the same being checked by the returns on the executions,) and finally and fully pay up and account with the treasurer for all monies and certificates received or which ought to have been received by him in virtue of his appointment as collector, on or before the first day of November in each year, on pain of forfeiting all commissions to which he would have been entitled had he done his duty, and of being proceeded against in like manner as is by law directed in case of the failure of sheriffs: and any collector failing to render an account or statement, settle, pay and account as aforesaid, shall thenceforward be considered as having forfeited his appointment as collector of arrears, and he and his securities

To make return on oath of their transactions to the treasurer, &c.

Time limited to complete a settlement with the treasurer, &c.

Penalty for failure.

shall be proceeded against accordingly, without further notice.

How executions are to issue where delinquents and their securities reside in different counties.

3. *And be it further enacted*, That in all cases where judgments have been or shall be obtained against delinquent sheriffs, and others in arrear to the state, and where it shall so happen that the principal and his securities do not all reside in the same county, it shall and may be lawful for the clerks of the courts, on application of the treasurer, to issue executions from time to time to any one of the counties in which either of the parties reside, or in which their property may be found, any law, custom or usage to the contrary notwithstanding.

Collectors to enquire into frauds in certain cases.

4. *And be it further enacted*, That the collectors aforesaid, in all cases where those in arrear and their securities have removed themselves out of the limits of this state, or become insolvent, in all cases where no bond and security hath been given for the accounting for the public taxes or other public dues, and in all cases where sheriffs or other public debtors have been discharged from payment by any decree or judgment of the courts, and where there still remains a balance unpaid and due to the state, shall make diligent search and enquiry, as well for property fraudulently sold, conveyed or concealed, as to inform themselves whether there does not still remain in the hands of those formerly employed in collecting taxes or other monies, balances of the monies and certificates by them collected which are yet unaccounted for; and to this end they shall have power, and are hereby authorised, to call on the clerks of any of the courts of this state for copies of such part of their record or papers as may tend to the discovery and detection aforesaid; and such information and proofs having obtained, they shall lay the same before the treasurer, who shall proceed in the same manner against such delinquents as though they were sheriffs, and shall on motion be entitled to judgment against them and their securities accordingly.

Clerks of courts to furnish them with copies of records, &c. if required, &c.

How to proceed against clerks refusing such copies, &c.

5. *And be it further enacted*, That in case of the neglect or refusal of any of the clerks of the courts in this state to furnish to the collectors aforesaid such transcripts and copies of the records as aforesaid, it shall be the duty of the collector to make report of such neglect or refusal to the court of the county at the next succeeding term, who shall examine and enquire into the causes of

such neglect or refusal; and on such examination and enquiry being had, in case it shall appear to the satisfaction of the court that such transcripts or copies were refused or withheld without just cause, or that they were so refused and withheld from sinister motives, and with intent to conceal or defraud, then and in that case the court shall direct a prosecution to be commenced by the county solicitor for the said offence, and upon conviction such clerk shall be removed from office, and another appointed in his place accordingly.

What liable to if convicted of refusing from fraudulent motives.

6. *And be it further enacted*, That if any revenue or other public officer shall hereafter become indebted and in arrear to the state, so that judgment shall be thereupon had against him, then and in that case it shall be lawful for the sheriff or other officer to whom the writ of execution shall issue in consequence of such judgment, and he is hereby required, to levy on and sell so much of the property of such delinquent officer or his securities, over and above the amount of the debt due the state, as shall be sufficient to pay and satisfy the commission of eight per centum, given by this act to the collectors of arrearages aforesaid, together with the costs of suit.

Property of delinquents, &c. to be levied on for collectors' fees.

7. *And be it further enacted*, That in case it shall at any time so happen that the sheriffs of this state or any of them shall refuse to attend the collectors when called on for that purpose, in search of goods and chattels, lands and tenements, proper to be levied on, or shall fail or refuse to appoint the time of any intended sale, to advertise the same, and to attend and do his duty on the day appointed, or in case they or any of them shall fail to do and perform the several duties by law required of them; then and in that case it shall and may be lawful for the collector to demand of the sheriff so failing in duty, the execution or executions on behalf of the state committed to his or their care, and to proceed to levy, make sale and return the same, in like manner as though he were sheriff; and for his services in so doing, he shall be entitled to the same fees and commissions as sheriffs.

Sheriffs neglecting or refusing to do their duty.

collectors may perform it, and receive their fees.

8. *And be it further enacted*, That in case any of the collectors appointed, or who may be hereafter appointed under the authority of this act, shall at any time be guilty of extortion or other mal-practice in office, tending to the injury of any citizen, he or they so offending,

Penalty on collectors guilty of mal-practice in office, &c.

and being thereof convicted, shall forfeit and pay to the party injured the sum of five hundred pounds, to be recovered in any of the superior courts or county courts of pleas and quarter sessions of this state, and shall thereafter be held and deemed unworthy of the appointment of collector, or of any office or appointment of profit or trust in this state.

The delinquency of any officer deemed sufficient notice for taking judgment, &c.

9. *And be it further enacted*, That for the future no citation or other warning shall be required or held necessary, preparatory to the taking judgment against any delinquent revenue officer, but the delinquency of all such officers shall be, and the same is hereby declared to be held and deemed good and sufficient notice, and shall be so considered by the courts in this state, as well for the officers themselves as for their securities; and on all motions of the attorney or solicitor general in behalf of the state, for arrears of taxes or other monies or certificates due the state, judgments shall be granted as well against the principals as their securities, without further notice accordingly.

CHAP. 384.

An act directing the manner of proceeding against the several officers therein mentioned.

Persons injured by the misconduct of public officers may sue on their bonds without assignment.

(a For summary proceedings against officers, see 1800, c. 559, 1802, c. 619, s. 1, 1819, c. 1002.)

To receive all monies recovered from any officer by whom they have been injured, to their own use.

Proviso.

1. *Be it enacted, &c.* That it shall and may be lawful for any person or persons injured by the neglect, misconduct or misbehaviour in office of any of the clerks of the superior or county courts, clerks and masters in equity, registers, entry-takers, surveyors, sheriffs or constables, to institute a suit or suits against the said officers or any of them and their securities, upon their respective bonds for the due performance of their duties in office, in the name of the person or persons to whom the said bonds are made payable, without any assignment thereon. (a)

2. *And be it further enacted*, That the person or persons so injured and bringing suit as aforesaid, shall be and are hereby declared to be entitled to receive to his, her or their own use all monies so recovered, in like manner as if the suit or suits had never been instituted in his, her or their own name or names on assignment as heretofore required; *provided* the person or persons

so injured and bringing suit as aforesaid shall state in the declaration, as he, she or they are hereby authorised to do, matter of inducement sufficient to shew the court (in which such suit or suits may be brought) at whose instance and in whose behalf the same is or are brought.

3. *And be it further enacted*, That any person or persons injured as aforesaid, by any of the officers aforesaid, may at his, her or their elections bring an action on the case against such officer or officers, and recover damages for his, her or their injury as aforesaid, or an action of debt as above directed.

May bring an action on the case or an action of debt.

4. *And be it further enacted*, That all clerks of the superior and county courts, clerks and masters in equity, registers, public inspectors and surveyors, shall and they are hereby required to renew their several bonds for the faithful discharge of their duties in office, with good and sufficient securities, at the several and respective courts wherein they have their appointment which shall be held after the first day of June next ensuing, and once in every three years always thereafter. (a) And it is further declared, that all such of the said officers as shall refuse or neglect to renew their respective bonds at the times before mentioned, and to give other and better securities when judged necessary by the said courts, shall be considered as having forfeited their respective offices. And the several courts which have the appointment of such officer or officers so refusing or neglecting as aforesaid, shall and they are hereby required to proceed to the appointment of others in the place or places of him or them so refusing or neglecting.

Officers to renew their bonds &c.

(a See 1806, c. 699, and 1819, c. 990.) on pain of forfeiting their offices.

Court to appoint others instead of those refusing as aforesaid.

5. *And be it further enacted*, That when any constable or constables in any county within this state, shall or may have received any money in virtue of his office or appointment as constable, and shall fail to pay the same to the person or persons entitled to receive it, that then and in that case it shall and may be lawful, upon motion made in the court of the county in which such constable resides, for said court to give judgment against said constable or constables, and his or their securities for all sum or sums of money so received and collected, together with costs, and to award execution thereon in the same manner as other executions issuing from said court, *provided* such constable has ten days previous notice of such motion. And where it shall so happen that any person's appointment as constable shall expire, or he

Proceedings against constables failing to account for monies received in virtue of their office.

Provide.

shall be removed from his office or appointment before such motion made, the same remedy, proceedings and relief shall and may be had against him as if such person was actually in office, any thing to the contrary notwithstanding.(a)

(a See 1800, c. 559, s. 1, 1802, c. 619, 1819, c. 1002.)

CHAP. 385.

An act for raising a revenue for the payment of the civil list and contingent charges of government for the year one thousand seven hundred and ninety-four.

Rule to be observed as to allowance for insolvents.

1. *Be it enacted, &c.* That no allowance shall be made for insolvents to sheriffs or receivers of public money, unless such sheriff or collector shall make oath that the list by him tendered to be allowed as insolvents, was so at the time he ought by law to have accounted for such collection.(b)

(b See 1786, c. 255, s. 2.)

[*The other provisions of this act were temporary.*]

CHAP. 386.

An act to authorise the several county courts in this state to establish inspections at such places as they may think proper in their respective counties.

(See act 1784, c. 206, and the acts there referred to, & 1805, c. 681, 1810, c. 793, 1811, c. 807, 1813, c. 852.)

County courts authorised to establish places of inspection.

To appoint inspectors.

Their duty and privileges.

1. *Be it enacted, &c.* That the several county courts in this state be and they are hereby authorised, to appoint such place or places of inspection in their respective counties as they may think necessary, proper and convenient; and to appoint one or more inspectors for such place or places, whose duty it shall be to inspect such article or articles as by law are required, which are or may be brought to his place of inspection for that purpose; which inspectors, when so appointed, shall take the same oaths, and be subject to the same rules, regulations and restrictions, and be entitled to the same benefits and emoluments, as directed by the several acts of Assembly in force in this state, any law to the contrary notwithstanding.

CHAP. 387.

An act to amend an act, entitled "An act to compel certain officers therein mentioned to publish the application of public money and allowances for insolvents." (See 1786, c. 255.)

Whereas the before recited act does not describe in what manner the sheriff shall settle and pay those who are holders of county claims, neither does it point out a regular method whereby the county trustees shall and may settle with the sheriff; whereby many good citizens, having just claims for county money, are delayed of obtaining their right:

1. *Be it therefore enacted, &c.* That from and after the passing of this act, it shall be the duty of all clerks within the respective counties of this state, which if the same shall be thought advisable or necessary and so ordered by the county court, to number all claims, orders and certificates that may be allowed by the court in which he or they act, in a book kept for that purpose; and shall annually, the day before the county court's proceeding to lay a county tax for the ensuing year, furnish the chairman of the court with a copy of the same; likewise shall insert the different allowances agreeable to number in the tax list that such clerk or clerks supplies the sheriff or collector with, in order that the same may be collected and paid according to their number and priority.

Clerk of the county court to number all claims against the county.

To furnish the chairman of the court with a copy annually, &c.

2. *And be it further enacted,* That the county trustee shall only settle with the sheriff or collector of public taxes according to number, beginning at the lowest number; and where there is no trustee in the county, the county court may and shall proceed to settle with their sheriff or collector of public taxes in the like manner.

County trustee how to settle, &c.

3. *And be it further enacted,* That any county clerk neglecting or refusing to perform any part of the duty enjoined by this act, he shall forfeit and pay the sum of ten pounds for every such offence, recoverable before any jurisdiction having cognizance thereof, one half to the use of any person who may commence suit for the same, the other half to be applied towards defraying the county tax.

Penalty on clerk neglecting any duty enjoined by this act, &c.

4. *And be it further enacted,* That when any county court shall so direct their clerk to record and number

Court to allow him for his services.

the county claims as aforesaid, such county court shall and may allow the clerk for all such services, annually, any sum not exceeding forty shillings.

CHAP. 388

(See 1785, c. 243.)

An act to amend an act for ascertaining the duties and salary of the public printer, and to repeal part of the seventh section of an act passed at Edenton, in the year one thousand seven hundred and twenty-nine, entitled "An additional act to an act for appointing toll-books, and for preventing any person from driving horses, cattle or hogs to other persons' lands."

Directions concerning the printing of the laws.

(a See 1798, c. 511, s. 1, 1810, c. 795.)

Secretary to collect a list of the fees, &c. of public officers in this state, &c.

(b See the list, c. 403.)

Part of an act repealed.

(c 1729, c. 19.)

1. *Be it enacted, &c.* That the printer or printers of the state shall and they are hereby required to print the public laws separate from the laws of a private nature, leaving a blank page between the public and private laws, and that they likewise print in the margin of each page the year in which the law was passed.(a)

2. *And be it further enacted,* That the secretary shall cause to be collected from the laws of this state and of the United States, a complete list of all the fees that are demandable by any officer in the state for any service he is to perform, also the salary of each officer for the present year, and to furnish the public printer with the same, which the printer is directed to publish with the laws passed at this session.(b)

3. *And be it further enacted,* That from and after the passing of this act, that all that part of the seventh section of the before recited act,(c) as authorises a justice of the peace to order a white person to be whipped for certain causes therein mentioned, be and the same is hereby repealed and made void.

CHAP. 389.

(See 1777, c. 115, s. 25, 26, 27, 28, 30, 31, 32, 33, 72.)

An act to amend such parts of the act, entitled "An act for establishing courts of law, and for regulating the proceedings therein," as may relate to proceedings on attachments; and for amending an act for making process in equity effectual against persons who abscond and who reside without the limits of the state, and for better regulating the proceedings in the court of equity.

Whereas it often happens that garnishees, as well on original as judicial attachments, declare that they have

in their hands property of the defendant or defendants of a specific nature : And whereas by the before recited act no provision is made for ascertaining the value of such specific property, so as to enable the party plaintiff, where he shall have made his recovery, to sue out execution for the same : For remedy whereof,

1. *Be it enacted, &c.* That from and after the passing of this act, whenever any garnishee shall on oath confess that he or she has in his or her hands any property of the defendant of a specific nature, or is indebted to such defendant by any security or assumption for the payment or delivery of tobacco or other specific article, then, in either of those cases, the court before whom such garnishment shall be made shall immediately order a jury to be impanelled and sworn, to enquire of the value of such specific property, and the verdict of such jury shall subject such garnishee to the payment of such valuation,^(a) or so much thereof as shall be sufficient to satisfy the debt or damages, and costs of the party at whose instance such garnishee shall have been summoned. *Provided always,* That such garnishee who may on oath confess that he or she has in his or her hands any specific property of the defendant, as left or deposited in his or her possession by such defendant, may always exonerate him or herself by delivering such property to the sheriff, who levied such attachment, or may levy the execution issued thereon; and the party suing out such attachment, shall not be at liberty to issue such execution against such garnishee until the court next following such garnishment.

2. *And be it further enacted,* That when any garnishee shall be called into court, and on his or her garnishment shall deny that he or she owes to or has in his or her hands any property of the defendant, and the party plaintiff in such attachment shall on oath suggest to the court that such garnishee owes to or has property in his or her hands belonging to the defendant, or when any garnishee shall on his or her garnishment make such a statement of facts that the court before whom such garnishment shall be made cannot proceed to give judgment thereon, then, in either of those cases, the court shall order an issue to be made up, which shall be tried by a jury, and the court shall give judgment on their verdict as in other cases.

Property of a specific nature in the hands of a garnishee how to be valued, &c.

(a Amended—see 1794, c. 424.)

How a garnishee may exonerate himself, &c.

Proceedings where a garnishee denies that he has property of a defendant, &c.

Proceedings
where an at-
tachment is le-
vied on proper-
ty claimed by
another person,
&c.

3. *And be it further enacted,* That when any person shall sue out an attachment, and the same shall be levied on property which shall be claimed by any other person, such claimant shall be at liberty to interplead, first giving security for such costs and damages as may be awarded against him, and shall at the same time file a petition in writing, setting forth the particular property claimed, and by what right or title he claims the same, a copy of which petition shall be served on the party suing out such attachment at least ten days before the next court; and at the court to which the return of such petition shall be made the court shall order a jury to be impanelled, to enquire in whom the property is of such article or property as may be so levied upon, and the finding of such jury shall be conclusive as to the parties then in court, and the court shall adjudge accordingly.

How to proceed
against persons
conveying away
their property
to avoid the
payment of an
execution, &c.

(See 1806, c.
700.)

4. And whereas frauds are frequently committed on executions, in order to prevent the recovery of the honest creditor: *Be it therefore enacted,* That when the sheriff of any county in this state, returneth on the execution in his hands that there is no property to be found belonging to the defendant in his county, and it is suggested by the plaintiff that the defendant hath fraudulently made away with his property, for the purpose of avoiding the payment of the execution, notice in the nature of a scire facias, on motion of the party plaintiff, shall be directed by the court to issue to the person or persons in whose hands such property is supposed to be held, and on return of the said scire facias, executed as other original process, an issue shall be made up whether any fraud or concealment of his property hath been made by the defendant to the person cited or noticed, or whether the same hath been made over to avoid the recovery aforesaid, without just and valuable consideration; and if the jury shall find such fraud, concealment or making over as aforesaid, they shall also specify the property so fraudulently concealed or made over, and execution shall issue against the same in the hands of the garnishee or person notified, in the same manner as against the defendant himself, until the judgment shall be satisfied, should such property be sufficient for that purpose.

5. And whereas by the present mode of proceedings on attachments, the person or persons who enter them-

selves as special bail on replevying the property, become special bail to answer the whole demand of the plaintiff: *Be it therefore enacted*, That the person or persons entering themselves as special bail on replevying property attached, shall only be held liable to answer the value of the property which he, she or they as aforesaid do respectively hold or have returned in the garnishment, and no more, but the security replevying shall not avail themselves of paying the value of the property so replevied, unless such security shall at the return term or session move the court to impanel a jury to ascertain such value by enquiry, which enquiry the court shall have executed on motion made as aforesaid, notice being given to the plaintiff in attachment, his agent or attorney, at least five days before such motion shall be made, and that in cases coming before a justice out of session, three freeholders shall be summoned to assess and value the property on oath.

Persons entering as special bail on replevying property, liable only for the value of the property held, &c.

6. *And be it further enacted*, That when any original or judicial attachment shall be returned to any court within this state, as levied upon the goods and chattels, lands and tenements, of any person or persons residing without the district in which such attachment has been issued, it shall be the duty of the clerk of such court to cause the same by public advertisement^(a) to be made known for three months next after the return made as aforesaid; and until the said three months^(b) shall have expired, it shall not be lawful for such courts to suffer any final judgment to be entered upon any such attachment: *Provided always*, Where such proceeding on original attachments shall be had before a justice out of session, it shall be the duty of the justice to direct advertisement of the same for the space of thirty days only.

Proceedings where an attachment is returned to court as levied on property of any person out of the district, &c. (a Costs of publication to be taxed—see 1819, c. 995.)

Proviso.

7. And whereas great complaints have been made of the charges of commissions on accounts allowed the masters in equity in this state: *Be it therefore enacted*, That so much of an act making process in equity effectual, &c. passed in the year one thousand seven hundred and eighty-seven, at Tarborough, which grants the masters and clerks in equity for a report stating an account, one per cent. on the amount of the account exhi-

Part of an act repealed.

(b In cases before a justice of the peace, publication to be for thirty days, where the party resides without the county. 1794, c. 414, s. 15.)

(a See 1787, c. 278, s. 3.)

Allowance to masters in equity in future for certain services.

bited where the account is made five hundred pounds, and one half per cent. for all sums over five hundred pounds, (a) be repealed and made void; and that the clerks and masters in equity shall be allowed on all such reports, as much as the courts may in their discretion think adequate to the actual labour and trouble bestowed, not exceeding in any case the sum of twenty-five pounds; and the master shall in all cases give notice to the party liable to pay costs, of the time that he will move the court to tax such costs as may arise on the reference of accounts.

CHAP. 390.

(The provision for a tax super-
seded by 1817,
c. 945.)

An act to empower the wardens of the poor in the several counties within the state to lay a further tax for the support of the poor, and for electing wardens of the poor where none have been elected agreeably to law.

Wardens to erect buildings when necessary.

1. *Be it enacted, &c.* That the said wardens are likewise empowered, when to them or at least two-thirds of them in each county it appears necessary, to erect proper buildings in their respective counties for the reception, residence and employment of the poor.

County court to order an election for wardens when necessary.

2. And whereas it sometimes happens that an election for wardens of the poor is omitted at the time appointed by law, whereby doubts have arisen whether any election would be legal until the next year; *Be it enacted,* That in all cases when the time of service of the last appointed wardens shall be expired, and the county court deem a new election necessary, it shall be lawful, and they are hereby required to order an election for wardens, which the sheriff of the county shall obey and hold under the same rules, regulations and restrictions as are prescribed by law for the regular elections.

CHAP. 391.

An act directing in what case sheriffs shall sell the estate of deceased persons, and to repeal part of an act, passed in the year one thousand seven hundred and twenty-three, as to the manner of advertising the sales of the estates of deceased persons.

Whereas doubts have arisen in what cases the sheriff should be employed to sell the estates of deceased per-

sous, and great abuses have taken place in consequence thereof :

1. *Be it enacted, &c.* That from and after the passing of this act, it shall not be held or be deemed to be the right or duty of the sheriff to sell or dispose of the estate of any deceased person, except where administration may be granted to the creditor or the creditors of the deceased, in which case the sheriff shall be allowed by the court, so as such allowance does not exceed two and a half per cent. any law to the contrary notwithstanding.

In what case the sheriff may sell the estates of deceased persons.

His commissions.

2. And whereas by an act passed in the year one thousand seven hundred and twenty-three, entitled, "An additional act to an act, entitled, An act concerning proving wills and granting letters of administration, and to prevent frauds in the management of intestates' estates," (a) it is enacted that the executors or administrators shall advertise the sale of the estates of deceased persons, by affixing a copy of the whole inventory exhibited by them, at the court-house door of the precinct, during the court's sitting : And whereas this act hath been in many parts of this state disused, and hath been found unnecessary and inconvenient ; *Be it therefore enacted*, That so much of the said recited act as shall require executors or administrators to affix a copy of the inventory to advertisement of sale, shall be and the same is hereby repealed and made void.

(a C. 15.)

Part of an act repealed.

CHAP. 392.

An act for limiting what value suits may be commenced in the superior courts.

Whereas by an act of assembly passed in the year one thousand seven hundred and seventy-seven, it was enacted that no suit should be instituted in any superior court where the parties resided in the same district for less than one hundred pounds, and when in different districts fifty pounds, and the judges having decided that the same was in depreciated money, and thereby the intention of the law is rendered ineffectual : For remedy whereof,

1. *Be it enacted, &c.* That from and after the passing of this act, no suit shall be originally commenced in any

Of what value suits may be

commenced in
the superior
court, &c.

(a Altered by
1808, c. 741.)

of the superior courts in this state, for any debt or demand of less value than one hundred pounds, where the plaintiff and defendant live in the same district, or for less than fifty pounds, where the parties live in different districts, (a) and if any suit shall be commenced contrary to the true intent and meaning hereof, or if any person shall demand a greater sum than is due, on purpose to evade this act, in either case the plaintiff shall be nonsuited and pay costs: *Provided always*, That if the plaintiff or any other person for him will make an affidavit (to be filed in the court) that the sum for which his suit shall be brought, is really due, but for want of proof, or that the time limited for the recovery of any article, bars a recovery, then and in that case such plaintiff shall have a verdict and judgment for what appears legally proved, any thing to the contrary notwithstanding. *Provided also*, That nothing herein contained shall extend or be construed to extend to suits on bonds, penal bills, or other action of debt, grounded on a penalty, where the balance due on such bond or penal bill, or other action of debt, is not of less value than the same herein before mentioned to be limited for bringing suits in the said courts.

CHAP. 393.

(See 1790, c.
319.)

An act to amend part of an act, entitled, "An act to prevent any person who now does, or who may hereafter, hold any office, appointment or authority under the federal government, from being eligible to a seat in the General Assembly of this state, and to prevent any person from holding or exercising any office or appointment under the authority of the said state, so long as they continue to hold or exercise any office or appointment under the authority of the United States," as relates to the senators and representatives vacating any commissions they may hold as justices of the peace.

Part of an act
repealed.

1. *Be it enacted, &c.* That the said act, so far as it relates to the senators or representatives of this state vacating any commission they may hold as justice of the peace by accepting a seat in the Congress of the United States, either as a senator or representative, be and the same is hereby repealed and made void.

CHAP. 394.

An act to compel the entry-takers of the several counties in this state to give bond and security every two years hereafter, for the faithful performance of their duty, and to repeal so much of an act passed at Hillsborough, one thousand seven hundred and eighty-four, as authorises any person unwilling to pay taxes for their land to make a surrender of such land to the state, and directing such persons as have surrendered heretofore to describe the land surrendered.

1. *Be it enacted, &c.* That it shall be the duty of the county courts respectively, and they are hereby empowered and directed, to call on the entry-takers of their respective counties at the term which shall happen next after the first day of July, one thousand seven hundred and ninety-four, to give bond with sufficient security, in the sum of two thousand pounds, payable to the governor for the time being, and conditioned for the faithful discharge of his duty as entry-taker; and no entry-taker who shall be appointed from and after the said first day of July next, shall enter upon the discharge of his office without giving such bond and security; and at the expiration of every two years thereafter, such entry-taker shall in the same manner as at first renew his bond with security as aforesaid. And in case any entry-taker shall refuse or neglect to give bond and security, and renew the same as by this act required, every such entry-taker so refusing is hereby declared to vacate his office, and to be ineligible to the second appointment; and it shall be then the duty of the court of such county wherein the said entry-taker resides, to proceed immediately to the appointment of another person, well qualified, to fill such vacancy: Also if the said entry-taker, or any entry-taker within this state, shall fail to produce a certificate from the treasurer, that he has paid up all monies and certificates by him received in virtue of his office to the end of the preceding year, his appointment shall be vacated in manner as aforesaid. And all entry-takers appointed to fill such vacancies as by this act made, such shall be under the same rules, regulations and restrictions as other entry-takers within this state: *Provided nevertheless*, That if the entry-taker of any county shall produce to the court of the county a receipt in full of a final settlement of his accounts to the end of the preceding year, at the time he is required to renew his bond in the year one thousand seven hundred and ninety-

County courts required to take bond from entry takers for the faithful discharge of their duty.

Bond to be renewed every two years.

Public debtors ineligible to the office of entry-taker.

Entry-taker displaced to deliver up his books, &c. to his successor.

Lands surrendered and not particularly described a plat and description thereof to be filed with the clerk of the county, &c. under a penalty.

Part of an act repealed.

(a C. 195.)

Entry-taker to return to the comptroller's office a fair list of all entries made in his office, &c.

(Repealed—see 1796, c. 455, s. 9.)

six, it shall be sufficient. *And provided also,* That no public debtor shall be eligible to the office of entry-taker.

2. *And be it further enacted,* That if any entry-taker, who by virtue of this act is displaced, refuses to deliver up his books and all other papers and documents relative thereto, to his successor in office, he shall for such refusal forfeit and pay the sum of two thousand pounds, to be recovered before any jurisdiction having cognizance thereof, to be applied to the use of the state.

3. *And be it further enacted,* That where lands have been surrendered up to the state by any person or persons, under the act of the General Assembly passed at Hillsborough in the year one thousand seven hundred and eighty-four, and have not been particularly described in such surrender, the person so availing himself of the act aforesaid, shall within twelve months after the passing of this act file in the office of the clerk of the county wherein such surrender was made, an exact plat of the land so surrendered, with a particular description of the bounds and quantity thereof, under the penalty of fifty pounds, to be recovered as aforesaid, one-half to the person suing for the same, and the other half to the use of the state ; and that so much of an act of the General Assembly, passed at Hillsborough, in the year one thousand seven hundred and eighty-four, (a) which authorises any person or persons to surrender up their lands to the state, be and the same is hereby repealed and made void.

4. *And be it further enacted,* That for the year one thousand seven hundred and ninety-four, and each succeeding year, it shall be the duty of each and every entry-taker within this state, to return to the comptroller's office on or before the first day of October which shall happen after the close of each year, (on pain of forfeiting for every failure or neglect the sum of one hundred pounds, to be recovered on motion of the attorney for the state on the comptroller's certificate stating the neglect or failure,) one fair list of all the entries made in his office in the course of the preceding year ; which list shall contain the number and date of each entry, also the name of the person making the entry, and the number of acres entered by each ; each of which returns or lists shall commence on the first day of January, and end on the thirty-first day of December in

the same year; and where it shall so happen that an entry-taker hath been appointed when the year was advanced, his first return shall commence with his appointment, and end at the close of the same year.

5. *And be it further enacted*, That it shall not be lawful for any person making an entry of lands to withdraw the same, but all entrance monies shall be paid by the respective entry-takers into the public treasury, ^(a) and in case of deficiencies when the lands entered shall be surveyed, the persons entering may avail themselves of the mode of relief already pointed out by law.

Persons entering lands not to withdraw their entries, &c.
(a See 1794, c. 417, s. 2.)

6. *And be it further enacted*, That all acts and parts of acts, which come within the meaning and purview hereof, shall be and the same are hereby repealed and made void.

Repealing clause.

CHAP. 395.

An act to amend an act, entitled, “An act for regulating weights and measures.” (See 1741, c. 32.)

Whereas it does appear to this General Assembly that the standard-keepers’ fees are not adequate to the trouble annexed to their appointments: Therefore,

1. *Be it enacted, &c.* That from and after the passing of this act, the several standard-keepers in this state shall be and they are hereby entitled to receive for each and every pair of steelyards, weights ^(b) or measures by them stamped and sealed, the sum of one shilling and six pence.

Standard-keepers’ fees.

(b Altered by 1818. c. 965.)

2. *And be it further enacted*, That all acts or parts of acts that come within the meaning and purview of this act, are hereby repealed and made void.

Repealing clause.

CHAP. 396.

An act approbating the new great seal of the state.

Whereas in pursuance of an act passed at Newbern, in the year one thousand seven hundred and ninety-one, entitled, “An act to provide a proper seal for the state and the several courts of record,” ^(c) the governor hath procured a new great seal for the state, calculated to

(c See 1791, c. 344.)

make an impression on the face of the grant, commission or other public act with one side only :

New great seal approved, and when to be used.

Proviso.

(a See 1794, c. 419.)

1. *Be it therefore enacted, &c.* That after the first day of March next, the said new great seal shall be used for attesting and authenticating all grants, commissions, proclamations and other public acts ; and the said new great seal shall be good and valid, to all intents and purposes, as the former great seal hath heretofore been ; any law, usage or custom to the contrary notwithstanding. *Provided nevertheless,* That the former great seal of the state shall and may be used for attesting and authenticating grants, commissions, proclamations and other public acts, until the said first day of March next, and until the said new seal shall be deposited in the secretary's office, (a) and after that day shall be kept for the purposes mentioned in the fourth and last section of the above recited act.

CHAP. 397.

An act to amend an act, entitled, "An act to amend the several acts of Assembly which respect the duties of the comptroller of the public accounts of this state," passed December, seventeen hundred and ninety-two. (b)

(b See 1792, c. 368.)

Rule to be observed in stating and keeping the public accounts.

1. *Be it enacted, &c.* That the directions of the said act with respect to the mode to be observed in keeping the public accounts of this state, and which are therein confined to the taxes of seventeen hundred and ninety-two and the monies becoming payable in seventeen hundred and ninety-three, and thenceforward, shall from and after the first day of November last, apply to and be observed in the keeping all public accounts reported on, or which ought to have been reported on by the comptroller, that is to say, they shall apply to and be observed in stating and keeping all accounts whatever, the monies due or which became payable after the first day of January, seventeen hundred and eighty-eight, the day on which the comptroller's reports are by the act of seventeen hundred and eighty-seven directed to commence.

Directions in respect to raising accounts a-

2. *And be it further enacted,* That the comptroller in raising accounts against individuals in arrears under this act, shall charge them with the balances for which

the treasurer claimed credit in the settlement of his public accounts up to the said first day of November last, that is to say, up to the first day of November, seventeen hundred and ninety-three, and which have been reported to the General Assembly and posted up during the present session, and with such other and further sums as he shall from time to time be enabled to produce a charge against them.

gainst individuals in arrear under this act, &c.

CHAP. 398.

tr

An act to annex part of Glasgow county to Wayne county.

Be it enacted, &c. That from and after the passing of this act, all that part of Glasgow county, lying, situated and bounded as follows, beginning where the Wayne county line crosses the south prong of Bear Creek, then down the said south prong to the fork, then up the north prong to where the Wayne county line crosses the same, and then with the said county line to the beginning, be added to and made a part of Wayne county.

Part of Glasgow
annexed to
Wayne county.

CHAP. 399.

An act to add part of Burke and Wilkes counties to the county of Iredell.

Whereas it is represented by petition to this General Assembly that many of the inhabitants of Burke and Wilkes counties would be highly benefited by being added to Iredell county :

1. *Be it therefore enacted, &c.* That from and after the passing of this act Iredell county shall be extended in the following manner, to wit, beginning at Iredell county line on the Catawba River, thence up said river about three miles to Uriah Davis, thence nearly a north course about two miles to the bent on lower Little River in James Fox's land, thence up said river to the lower end of John Barne's land, thence nearly a north-east course along the dividing ridge between Grassy and Muddy forks to Iredell line between Black Oak Ridge and Brushy Mountain, thence a south course along said line to the beginning; and all the land in-

Iredell county
extended.

cluded by said line is hereby annexed and added to the county of Iredell.

CHAP. 400.

An act for adding part of the county of Martin to Edgecomb.

Whereas adding the south-west corner of Martin county to Edgecomb will greatly relieve the inhabitants thereof:

Part of Martin
added to Edge-
comb county.

1. *Be it therefore enacted, &c.* That all that part of the county of Martin south-west of the line beginning where the line dividing Edgecomb and Halifax strikes Martin, running thence a straight course to the Wolf Pond near the Indian Branch, thence to the Great Cypress Pond on William's Thick, from thence to Thomas Taylor's as straight as may be so as to include Mica-jah May's, from thence due south to Pitt county line, be added to the county of Edgecomb; and that from and after the passing this act, all that part of the county of Martin within the bounds above prescribed be annexed to and made part of the county of Edgecomb, and the inhabitants thereof shall be subject and liable to the same rules, orders, taxes and privileges, as any others the inhabitants of the county of Edgecomb.

Commissioners
appointed to
run the line.

2. *And be it further enacted,* That George Cockburn, John W. Mayo, William Hyman, John Burnet and Robert Sherrard, be appointed as commissioners to lay off and divide the same as nearly within the limits above mentioned as the nature of the case will admit; which said line, when run by the commissioners aforesaid, shall be by them entered on record in each of the said counties of Martin and Edgecomb.

Regulations res-
pecting lands
entered in Mar-
tin, &c.

3. Whereas it may be that some of the inhabitants of that part of Martin county that by this act is annexed to Edgecomb, have entered land in the entry-office of Martin, *Be it therefore enacted,* That where any person shall have entered lands as aforesaid, the entry-taker of the county of Martin is hereby empowered and directed to make out warrants and orders of survey, and direct them to the surveyor of Edgecomb county; which said surveyor is hereby ordered and empowered to survey said land, to take the same fees, and make the same transmittance thereof, as if the same had been entered in the entry-office of Edgecomb.

CHAP. 401.

An act to amend an act, entitled, An act to facilitate the navigation of Cape-Fear river, from Fayetteville to the confluence of Haw and Deep rivers.(a) (a See 1792, c. 370.)

Whereas there is a number of fish dams, hedges and other obstructions in the aforesaid river, and doubts may arise whether the Cape-Fear company have power by the aforesaid act to cause them to be removed without subjecting themselves to suits :

1. *Be it therefore enacted, &c.* That as soon as the company aforesaid shall begin to clear the river aforesaid, they shall have power to remove or shall cause to be removed, all such fish dams, hedges or other obstructions which they or any other person working under them shall deem to be in the way of the navigation from Fayetteville up to the confluence of Haw and Deep rivers aforesaid; and any person or persons who shall thereafter erect or put up any stop, dam, hedge or ware, so as to obstruct the navigation aforesaid, shall forfeit and pay the sum of fifty pounds, to be recovered and applied as is heretofore directed.

Power to remove obstructions, &c.

2. *And be it further enacted,* That no person or persons shall hereafter fall any tree, or roll logs into the aforesaid river, under the penalty of five shillings for every such offence, and shall also remove the trees or logs out of the river aforesaid.

Penalty for falling trees, &c. in river.

3. *And be it further enacted,* That all the fines and forfeitures that are by this act imposed, shall be recovered in the name of the president of said company for the time being, and before any jurisdiction having cognizance thereof; and the monies arising therefrom to be applied to the facilitating of the navigation of Cape-Fear river aforesaid.

Fines how recovered and applied.

CHAP. 402.

An act to amend an act, passed at Newbern, in the year one thousand seven hundred and seventy-seven, entitled, An act to encourage the building of public mills, and directing the duty of millers.(b)

(b C. 122.)

Whereas it is provided in the tenth section of the before recited act, that millers shall not take more toll for grinding, than one-sixth part of Indian corn, and one-

eighth part of wheat, in the districts of Edenton, Newbern, Wilmington and Halifax, which is found to be more than sufficient in the districts of Halifax and Fayetteville :

Toll for grinding corn and wheat.

1. *Be it therefore enacted, &c.* That from and after the first day of May next, the millers in the districts of Halifax and Fayetteville shall not take more for grinding than one-eighth part of the Indian corn, and one-eighth of wheat, any thing to the contrary notwithstanding.

Read three times, and ratified in General Assembly, }
the 11th day of January, A. D. 1794. }

WM. LENOIR, S. S.
J. LEIGH, S. H. C.

Copy.—J. GLASGOW, Secretary.

CHAP. 403.

A List of the Salaries of the Public Officers in this State, as certified by the Secretary of State, the 3d of March, 1794,(a) and corrected in 1820.

(a See 1793, c. 388, s. 2.)

To his excellency the governor,	\$2000	To the door-keeper of the council of state, for each day he is employed,	80 cts.
To the secretary of state,	600	To the chief justice and each associate judge of the supreme court,	\$2500
Do. as librarian,	50	To each of the judges of the superior courts of law and equity, for every court he attends,	90
To the private secretary,	300	To the attorney-general, for attending the supreme court,	100
To the treasurer,	1500	To the clerk of the supreme court—to be allowed by said court, not exceeding	300
To the clerk of the treasury,	400	To the reporter of the decisions of the supreme court,	500
To the comptroller,	1000		
To the public printer,	1000		
To each member of the council of state, for each day's attendance, and for every 30 miles travelling to and from the city of Raleigh,	3		
To the clerk of the council of state, for each day he is employed,	2		

A List of all the Fees that are demandable by any Officer in the State for any service he is to perform, A. D. 1820.

To the Secretary of State.		Certifying the suspension of a grant, &c.	5s.
For making out and recording each grant, &c.	5s.	Copying and certifying a will,	4s.

Copying and certifying the record of a grant or patent,	4s.	For a report stating an account, to be allowed by the court, not exceeding	25l.
Every commission for a place of profit,	8s.	Copies of proceedings and explanation, copy sheet,	2s.
Every search,	1s.	Taking a bond,	1s. 6d.
Every certificate,	1s.	Every rule given for service,	2s. 6d.
<i>To the Governor's Private Secretary.</i>		Every rule not for service,	1s. 3d.
For a judge's commission,	40s.	Every subpoena, writ, or other process,	10s.
For an attorney-general's do.	20s.	Every dedimus or commission,	5s. 4d.
For a solicitor's do.	20s.	Every injunction,	10s.
For a commission to a senator to congress,	20s.	Drawing a decree by the copy sheet,	4s.
For a commission for a representative to do.	20s.	Enrolling a bill or answer by the copy sheet,	2s.
For a notary public's commission,	20s.	Entering a plea or demurrer,	2s.
For any commission for a place of profit,	20s.	Recording depositions to perpetuate testimony, copy sheet,	2s.
For a testimonial,	10s.	Every dismissal,	2s.
For a suspension of a grant,	7s. 6d.	Every search,	1s.
For affixing the seal to a grant,	2s. 6d.	Taking security on a leading process,	2s.
<i>To the Attorney-General and Solicitors in the superior courts.</i>		Recording such bond,	2s.
On every indictment for a felony, to be paid by the defendant on conviction,	£10	<i>To the Clerks of the Superior Courts.</i>	
On every indictment for a misdemeanor, to be paid by the defendant on conviction,	5	Fees not to exceed those of the clerks of county courts.	
<i>To the Attornies at Law.</i>		<i>To the Clerks of the County Courts.</i>	
For every suit in equity,	10l.	For every leading process returned to the first court, including all services, together with dismissal or final judgment,	10s.
For every suit in the superior or county courts, where the title of land shall come in question,	5l.	Presentment or indictment,	6s.
For all other suits in the superior courts, on the law side, and all other suits originally commenced in the county courts,	40s.	Recognizance,	2s.
In every appeal from the judgment of a justice of the peace to the county court,	20s.	Continuance or reference after second court,	3s.
<i>To the Clerk and Master in Equity.</i>		The court at which the cause is determined, including all services,	7s. 6d.
For a report on an answer,	3s.	Every subpoena for no more than four witnesses,	1s. 6d.
On a plea and answer,	4s.	Every execution or order for sale, including all services,	3s. 9d.
On a demurrer and answer,	4s.	Scire facias against the bail, including all services,	6s.
An affidavit to an answer,	1s. 6d.	Copy of a record of any cause,	4s. 6d.
An affidavit to a bill,	1s. 6d.	Order or rule of court foreign to any suit,	2s.
A separate affidavit,	2s.	Taking the probate of a will, qualifying executor, record-	
For copying a report, by the office copy sheet,	2s.		

ing and copying will, and granting certificate thereof,	8s.	For an account taken, the same as clerk and master in equity.	
Granting administration, taking bond and all other services thereon,	8s.	Clerks to tax the cost of publishing in cases of attachment, and the postage of letters covering process from one county to another.	
Proving and recording inventory, account of sales, or account current, exhibited by executor, administrator or guardian, or for search, copy and certificate of the same, if the estate be under 100l.		All other services deemed ex officio, for which an allowance is to be made by the court, not exceeding	20l.
If above 100l.	2s.	<i>To Sheriffs.</i>	
Every marriage license and bond,	4s.	For every arrest,	7s. 6d.
Ordinary license and bond and tavern rates,	8s.	Every bail bond,	2s. 6d.
Searching a record out of court,	8s.	Serving copy of declaration,	1s.
Taking the probate or acknowledgment of a conveyance, certificate of registration, examination of feme covert without commission,	8s.	Every subpoena they shall serve,	3s.
Commission to take the examination of a feme covert or witness in any cause,	1s.	Every attachment levied,	7s. 6d.
A guardian or other bond taken in court,	1s.	And if further trouble, by moving of goods, to be taxed by the court.	
Apprentices' indentures,		Replevy bond on such attachment,	2s. 6d.
Special verdict, demurrer, or motion in arrest of judgment,	2s. 4d.	For putting in stocks,	6s.
A writ of error or appeal with a transcript of the record,	6s.	Pillorying a person,	5s.
Witness' or juror's certificate,	6s.	Every commitment,	3s.
Recording a mark or brand, and certificate,	2s.	Every release,ment,	3s.
Taking bond on issuing a writ,	6s.	Every writ of possession,	10s.
Recording such bond,	6s.	Summoning, impanneling, and attending on every jury in every cause in court,	1s.
For each petition for correcting error in a grant or mesne conveyance,	3s.	When special venire ordered, for each juror summoned, and attending the same,	2s.
For affixing the seal to every instrument of writing that may require the same,	8s.	Executing a warrant of distress, or an execution against the body or goods,	
For every processioner's certificate recorded, to be paid by the proprietor of the land,	1s.	2½ per cent.	
For every search of the entry-taker's book in his possession,	2s.	Calling every suit in court,	6d.
For the copy of every location,	2s. 6d.	Serving and attending on any person on a habeas corpus, per day,	15s.
For issuing land warrant, granting certificate and affixing seal,		For selling an intestate's estate, to be allowed by the court, not exceeding 2½ per cent.	
		Summoning every warden of the poor, to be paid by the county,	12½d.
		Apprehending any criminal,	10s.
		Conveying prisoner to jail, for criminal offence, per mile,	6d.
		Maintaining said prisoner, per day,	4s.
		Each person composing sheriff's guard, per mile,	3d.
		Executing any sentence where	

a convict is to be corporally punished, except that of death, 10s.
 For the execution and decent burial of any felon, 5l.
 Every notice for taking depositions, 3s.
 Every notice from clerks of courts and clerks and masters in equity, to parties concerned in references to them, 7s. 6d.
 For services of equity process and incidental thereto, the same fees as for the like services at law.

To Coroners.

For attending on every inquest, to be paid by the county treasurer, 24s.
 And sheriffs' fees for discharging the duties of sheriff.

To Registers.

For registering each deed or grant, containing one tract of land, including the certificate, 4s.
 If the deed convey two or more tracts, 4s. for the first tract, and 1s. for every other; and in like manner for copies.
 For registering divisions of land, each lot, 1s.
 And the same for copy.
 For registering all other instruments of writing, 4s.
 For every search, 8d.

To Constables.

For every day's attendance on court when summoned, 8s.
 Whipping a negro by order of court or a justice, 2s. 8d.
 Serving warrant, for each person named therein, 4s.
 Summoning every witness, 2s.
 Every execution, 4s.
 Every attachment levied, 5s.
 Every bail bond, 1s.
 Serving notice on any one who fails to give in his list of taxables in due time, 2s.
 Serving notice on bail, 4s.

To Rangers.

For entering each horse, mare

or gelding, including the certificate, 5s.
 Each head of neat cattle, 2s. 6d.
 Each head of hogs and sheep, 1s.
 Every bond, 2s.
 For advertising strays, 15s.
 For every search, 1s.

To Entry-takers.

For every entry, including all services, 4s.

To Surveyors.

For every survey containing 300 acres or less, 16s.
 For every 100 acres above, 4s.
 Surveying lands in dispute by order of court, travelling to and from the place, and performing the duty, per day, 20s.

To Inspectors.

For inspecting, turning up, coopering, &c. each Hhd. of tobacco waggoned, 7s.
 And for every Hhd. rolled, 8s.
 Inspecting transfer tobacco, at the rate of 6d. per 100 lbs.
 For each bbl. of flour, 6d.
 ————— of pork or beef 1s.
 ————— of rice or butter, 8d.
 ————— of fish, 4d.
 ————— of pitch or turpentine, 3d.
 Every 100 staves or heading, 3d.
 Every 1000 shingles, 3d.
 Every 1000 feet of boards, plank or scantling, 1s.
 Every barrel of tar, 2d.
 Every barrel of flaxseed, containing $7\frac{1}{2}$ bushels, 1s.

To Tobacco Pickers.

For every 100 lbs. picked and prized, one-fifteenth part.

To County Solicitors.

For every indictment found, or presentment made, 26s. 8d.
 If the bill be found ignoramus, then the prosecutor shall pay, 13s. 4d.

To Commissioners of Affidavits.

For every affidavit taken and certified, 4s.

To Processioners.

One half the fees directed by law
for surveying lands.

To Gaolers.

For maintaining each prisoner
in gaol, per day, 3s.
The county courts (a majority of
the justices being present) have
the power of increasing the
gaoler's fees, so as not to exceed
50 per cent. on the above, and
so to continue for one year.

To Standard-Keeper.

For examining each pair of
steelyards, 15 cts.
Every weight of half a pound
and upwards, 5
Every set of weights below
half a pound, including one
piece of each denomination, 5
Every yard-stick, or other
measure of cloth, 5
Every bushel, half bushel,
peck or other measure, used
in measuring grain, meal or
salt, 10
Every measure of liquors, 3

*A List of the Salaries and Fees of the Judicial Officers of
the U. States for the District of N. Carolina, A. D. 1820.*

Salaries.

To the judge of the district
court, \$1500
To the attorney for the dis-
trict, 200
To the marshal for the district, 400

Marshal's Fees.

For the service of any writ,
warrant, attachment or
process, issuing out of any
court of the U. States, 2 00
And, in case there be more
than one person named
in the said writ, warrant,
attachment or process,
then for each person so
named, 2 00
For his travel out in serving
each writ, warrant, at-
tachment or process a-
foresaid, per mile, 5
to be computed from the place of
service to the court where the
writ or process shall be return-
ed; and, if more persons than
one are named therein, the tra-
vel shall be computed from the
court to the place of service
which shall be the most remote,
adding thereto the extra travel
which shall be necessary to serve
it on the other. 50
For each bail bond, 50
For actually summoning wit-
nesses or appraisers, each 50
For every commitment or dis-
charge of a prisoner, 50

For every proclamation in
the admiralty, 30
For sales of vessels, or other pro-
perty, and for receiving and
paying the money, for any sum
under 500 dollars, $2\frac{1}{2}$ per cent.
for any larger sum, $1\frac{1}{4}$ per cent.
upon the excess.
For summoning each grand
and other jury, 4 00
And limited to \$50 at each court.
For attending the circuit
court, per day, 5 00
For attending the district
courts, per day, 4 00
And at the rate of 10 cents per
mile for his travel from the place
of his abode to either of the said
courts.
For all other services, not enume-
rated, such fees and compensa-
tions as are allowed in the su-
preme court of this state.
For selling prize property, and re-
ceiving and paying over the pro-
ceeds, a commission of one per
cent. first deducting all duties,
costs and charges; and on no
ease of condemnation and sale
of any one prize vessel and car-
go, shall the commissions exceed
250 dollars.
A reasonable compensation to be
allowed by the court for the cus-
tody of all vessels and goods
seized by any officer of the re-
venue.

Clerks of the District Courts.

The same fees as are allowed in the supreme court of the state, with an addition thereto of one-third of said fees; and in case they perform any duty which is not performed by the clerks of the state, and for which the laws of the state make no provision, the court in which such service shall be performed shall make a reasonable compensation therefor. (Fees in admiralty and maritime causes excepted.)

The said fees, as taxed by the clerks, are,

For every leading process under seal returned to the 1st court, & all subsequent process, appearances, pleas, rules, orders, and other services necessary thereon, until the making up of an issue inclusive, and also for dismission or final judgment, where either happens, or for confession of judgment, 2 07

For every continuance or reference of every cause after the second court, including all fees for every necessary service, 66 2-3 cts.

For the court at which the cause is determined, including all fees for every necessary service thereon, and entering final judgment inclusive, 3 00

For every subpoena under seal, provided the party insert no more than four witnesses in the same, 74

For every execution or order of sale, when necessarily issued and returned, including all services thereon, with taxing costs and copy, and entering satisfaction and seal, 1 24

For every scire facias against bail and seal, with making an issue thereon, or entering judgment without plea, including fees for every service necessary thereon, provided that the party cast shall

not be subject to this, unless the scire facias is requisite and required by the plaintiff, 1 74

For giving a copy of the record of any cause when demanded by either of the parties, under seal, 1 00

For every order or rule of court made in matters foreign to the suit depending in court, and copy thereof when demanded, 44

For searching a record out of court, 16

For a commission to take the examination of a feme covert or witnesses in any cause depending, the return thereon entering, and all other services necessary thereon, and seal, 49

For a special verdict, demurrer, or motion in arrest of judgment, and argument thereon, 66 2-3 cts.

For a writ of error, certiorari or appeal, with a transcript of the record, and all services necessary thereon, 1 33

For making out certificates of witnesses' and jurymen's attendance, 11

For every security taken to prosecute plaintiff's suit or pay costs, 33 1-3 cts.

For entering the same, with the names of the security in the book to be by him kept for that purpose, 33 1-3 cts.

For affixing the seal to any instrument of writing that may require the same, 41

For an indictment, calling the prisoner to the bar, charging him, receiving and entering his plea at length, 1 66 2-3

For every recognizance, 33 1-3

For each continuance of an indictment, 66 2-3

For the trial of criminals, entering of final judgment, and issuing a copy of the sentence of the court, 3 00

For his attendance at court, per day,	5 00	pleadings, depositions, ex- hibits and writings, insert- ed therein,	10
<i>Clerks' Fees in Admiralty and Ma- ritime causes.</i>		Entering return of appraise- ment or sales, for each sheet of 90 words,	10
For drawing every stipula- tion, process, monition or subpœna, for each sheet containing 90 words,	15	Affixing the seal to any pa- per, when required,	25
And for engrossing each sheet,	10	Drawing commission to ex- amine witnesses, for each sheet containing 90 words,	15
Entering the return of process,	15	And for engrossing the same, if on parchment, including the parchment,	20
Filing every libel, claim, pleading, or other paper,	6	And if on paper, for each sheet of 90 words,	10
Copies of the pleadings, in- terrogatories, depositions and exhibits, when re- quired, for each sheet of 90 words,	10	Swearing each witness in court,	10
Entering each proclamation,	15	For every entry or writing not mentioned or described, such al- lowance shall be taxed as for similar services herein mention- ed.	
Entering each default,	12	On money deposited in court, a commission of one half of one per cent.	
Entering every rule of court,	15		
Examining each witness, and drawing his deposition, for each sheet containing 90 words,	15	<i>Attorney's Fees.</i>	
Certifying each exhibit, or writing shown to a witness at his examination,	25	For each day he shall neces- sarily attend on business of the United States, during the session of any district court,	5 00
Drawing every decree, or decretal order, for each sheet containing 90 words,	15	For travelling from the place of his abode to such court, per mile,	10
And for entering the same on the minutes, for each sheet as aforesaid,	10	For drawing interrogatories,	5 00
For drawing a record, or mak- ing a copy of the proceed- ings, for each sheet con- taining 90 words,	15	For drawing and exhibiting libel, claim or answer,	6 00
But no pleading, deposition, exhi- bit, or other writing, to be in- serted therein verbatim, or in hæc verba, shall be computed as any part of such draft.		And for all other services in any one cause,	6 00
Entering a record in the re- gister, or engrossing or copying proceedings or records to be sealed or ex- emplified, for each sheet of 90 words, including all		And such fees as are allowed in the supreme court of the state, to wit,	
		A tax fee as now charged in all suits, not criminal, nor of admiralty jurisdiction,	12 50
		Ditto on indictments and cri- minal prosecutions,	3 33 1-3

At a General Assembly begun and held at Newbern, on the seventh day of July, in the year of our Lord one thousand seven hundred and ninety-four, and in the nineteenth year of the independence of the said state : Being the second session of the said Assembly.

Richard D.
Spaight, Esq.,
governor.

CHAP. 404.

An act to cede to the United States of America certain lands, upon the condition therein mentioned.

Whereas the Congress of the United States have passed an act to provide for the defence of certain ports and harbours in the United States, in which is comprised Cape-Fear river and Occacock inlet, and also an act to erect a light-house on the head land of Cape Hatteras ; and whereas it is expedient that the United States should have the exclusive jurisdiction of a sufficient quantity of land on which said forts and light-houses shall be erected :

Preamble.

1. *Be it enacted, &c.* That part of the public ground laid off by the commissioners of Smithville, for a fort on Cape-Fear river, including part of the ground whereon Fort Johnston formerly stood, with the exclusive jurisdiction thereof, shall be and the same is hereby ceded to the United States of America, under the condition herein after mentioned.

Land ceded in
Smithville.

2. *And be it further enacted,* That the exclusive jurisdiction of Beacon island, in the harbor of Occacock, and four acres of land at the head land of Cape Hatteras, (a) and also so much of the town of Smithville, adjoining Fort Johnston, as may be found necessary for the said fort, not exceeding six acres, shall be ceded and stand vested in the United States, as soon as the proprietors of said lands shall convey the same to the United States.

Beacon Island
and Cape Hat-
teras.

(a See 1813, c.
857, s. 2, 3.)

3. *And be it further enacted,* That the above-mentioned lands are and shall be ceded to the United States, upon the express condition, that the fortifications, light-houses and beacons, for which the said lands are ceded, or to be ceded, shall be erected within three years, and be continued and kept up forever thereafter for the public use.

Condition.
(Time enlarged
by subsequent
acts.)

4. *And be it further enacted,* That nothing herein contained shall be so construed as to debar or hinder any of the officers of this state from serving any process, or levying executions within the limits ceded by this act

Restriction.

to the United States, in the same manner and to the same effect as if this act had never been made.

Read three times and ratified in General Assembly, }
the 18th day of July, Anno Dom. 1794. }

WM. LENOIR, S. S.

J. LEIGH, S. H. C.

Richard D.
Spaight, Esq.
governor.

At a General Assembly begun and held at the city of Raleigh, on the thirtieth day of December, in the year of our Lord one thousand seven hundred and ninety-four, and in the nineteenth year of the independence of the said state: Being the first session of the said Assembly.

CHAP. 405.

An act more liberally to endow the University of North-Carolina, and to secure the titles of certain inhabitants of Mecklenburg county, and other citizens of this state, to certain lands heretofore purchased from Henry Eustace McCulloh.

Whereas the trustees of the University of North-Carolina have, with a laudable zeal for the promotion of literature, erected a building for the use of the institution entrusted to them, and are at this time prepared to commence the exercises of the University, but have not funds to proceed in the liberal manner which the honour and interest of the public demand; and as the remnant of confiscated property unsold by the commissioners appointed for that purpose, might contribute to furnish them with the means of making a permanent establishment for the cultivation of science:

1. *Be it enacted, &c.* That all lands not heretofore sold, which under any of the laws commonly called confiscation laws, have been forfeited or confiscated to the use of the state, be and the same are hereby granted to and vested in the trustees of the University of North-Carolina, and their successors forever, in trust, for the use and benefit of the said University.(a)

And whereas a number of the inhabitants of Mecklenburg county, and other citizens of this state, purchased lands from Henry Eustace McCulloh, taking the bonds of the said Henry Eustace McCulloh to make a title or titles to the said purchased premises, which lands have become confiscated to the state, and the said

Confiscated property unsold vested in the trustees of the University.

(a Repealed by 1800, c. 548.)

purchasers cannot procure titles to the same: And whereas also other persons who had purchased lands from the said Henry Eustace McCulloh, executed mortgages to him for the said purchased premises previous to the fourth day of July, in the year one thousand seven hundred and seventy-six; and it is proper that such persons should have some easy method of completing their titles, and removing the incumbrances aforesaid:

2. *Be it enacted*, That so much and such part of the said confiscated lands, as may have been *bona fide* purchased or mortgaged as aforesaid, are granted to, and vested in the trustees of the University of North-Carolina, and their successors, (a) not only for the use and purpose above-mentioned in this act, but on the express trust that the said trustees and their successors shall take and use all proper ways and means, both in law and equity, to convey and assure to the equitable owners or claimants of such lands, a good and sufficient title in law to the lands so purchased or mortgaged as aforesaid; such equitable owners or claimants paying, or securing to be paid to the said trustees, or their successors, such sum or sums of money as may be justly and equitably due on such purchase or mortgage. *Provided*, That the interest to be required from such claimants, shall in no instance exceed the principal, nor shall interest in any case be calculated during the war.

Confiscated lands mortgaged, &c. vested in said trustees, &c.
(a See 1800, c. 548.)

What interest to be paid by mortgagor.

And to the end that the real value and amount of the said endowment may be known:

3. *Be it enacted*, That the said trustees shall keep an accurate account of the proceeds of the sales and payments made for said lands, with their expenses and disbursements, together with a statement of all other monies entrusted to their management, either by the public or individuals, and lay the same annually before the General Assembly.

Trustees to keep and render account of proceeds, &c.

4. *And be it further enacted*, That the proceeds of all sales which shall be made, and the amount of all payments received under this act, shall be considered as a fund, the interest whereof shall be applied to the uses and purposes expressed in this act, for the term of ten years, at the expiration of which time, the principal thereof, after deducting the charges of collection, shall be subject to the direction and disposition of the General Assembly. *Provided nevertheless*, That whenever

How to be appropriated.

the principal collected and intended by this act to be loaned as aforesaid, shall exceed ten thousand pounds, the surplus, if in cash, shall immediately be paid into the treasury of this state, and if in bonds, it shall be the duty of the said trustees to transfer them without delay to the public treasurer for the time being, for the use of the state.

CHAP. 406.

An act to prevent the owners of slaves from hiring to them their time, to make compensation to patrols, and to restrain the abuses committed by free negroes and mulattoes.

Whereas great mischiefs have arisen from slaves being permitted to hire their own time :

Slaves not permitted to hire their time.

Penalty, recovery, &c.

Manner of proceeding against such slaves, &c.

1. *Be it enacted, &c.* That it shall not be lawful, under any pretence whatever, for any person or persons to allow his, her or their slave, or any slave under his, her or their command or direction, to hire his, her or their time, under the penalty of forfeiting the sum of twenty pounds for each and every offence ; to be recovered before any justice of the peace, to the sole benefit of the party prosecuting : And it shall be part of the duty and charge of the grand jury both in the county and superior courts, to make presentment of any slave who shall be permitted by his or her master or mistress to go at large, having hired his or her time, and on such presentment being made, the court shall issue an order to the sheriff of the county where such negro may be, to take up such negro, and him or her safely secure, so that he can have such negro before the next county court ; and it shall be the duty of the sheriff to give the owner notice thereof (if residing within the district) at least ten days before the sitting of the court ; and the said court shall empanel a jury to enquire and try the truth of such presentment, on which trial or enquiry the owner may produce evidence as in other cases ; and if the jury shall find that the said presentment is true, such negro shall then be hired out by the sheriff of the county, at public vendue, for the space of one year, taking bond with security for the same, payable to the wardens of the poor, for the use of the poor of said county, subject to the payment of any charges respecting said negro.

Provided always, That when the owner resides out of the district, the sheriff shall give notice by advertisement in the nearest gazette, for at least two weeks, where a gazette shall be published in the district in which the sheriff shall live, but in other cases the sheriff shall advertise the same at the district court-house and the court-house of the county in which the said slave shall be presented or shall be taken up. *Provided always*, That when any person who shall hire the negroes of an orphan, shall hire to such slave his or her time, the slave shall only be hired out under this act, for such time or the remainder of the time as said slave may have been hired to such person.

Notice to the owner.

Proviso in favor of orphans' slaves.

2. *And be it further enacted*, That no person shall grant permission for any meeting or meetings of the negroes of others, or people of colour, at his, her or their houses, or on his, her or their plantation, for the purpose of drinking or dancing, under the penalty of forfeiting ten pounds on conviction of such offence, in any court having jurisdiction thereof, unless such slave shall have a special permit in writing or otherwise from his or her owner for that purpose.

Penalty for granting permission for negroes to meet, &c.

3. *And be it further enacted*, That the justices of the courts of pleas and quarter-sessions, if they deem it necessary, shall, at the first or second court which shall be held after the first day of January, in the year one thousand seven hundred and ninety-five; and the first court which shall be held after the first day of January in each year afterwards, appoint in each captain's district or company, any number, not exceeding six discreet and proper persons, to act as patrollers for the space of one year; and as a compensation for the services required of them as such, shall be exempted from serving on juries, working on roads, and from the payment of all county and parish taxes to the amount of forty shillings, and in addition to the fees hitherto allowed by law, the patrollers so appointed shall be entitled to receive the one-half of the penalties recovered under this act in the district in which such patrollers may respectively act and reside, except such penalties as may be incurred by hiring to negroes their own time.

Patrollers to be appointed.

Their compensation, &c.
(This section is partially repealed, by 1802, c. 616.)

4. *And be it further enacted*, That it shall be the duty of the patrollers, or two of them at least, appointed as aforesaid, to patrol their respective districts once at least in two weeks, for the purpose of carrying this act

Their duty.

And penalty for neglect.

(See 1802, c. 616, s. 1, 2.)

into effect; and on failure or neglect to perform such services, every person so failing or neglecting shall forfeit and pay the sum of ten pounds, recoverable before any jurisdiction having cognizance thereof, one-half to the use of the informer, and the other half to the use of the county where the same is recoverable.

5. *And be it further enacted*, That the patrollers in each district, or a majority of those present, shall have power to inflict a punishment, not exceeding fifteen lashes, on all slaves they may find off their owner's plantation, or travelling on the sabbath, or other unseasonable time, without a proper permit or pass.

Former fines how to be appropriated.

(a C. 267.)

6. *And be it further enacted*, That the fines and penalties heretofore recoverable for the use of the poor of the county, under an act, entitled "An act to prevent thefts and robberies by slaves, free negroes and mulattoes," passed in the year 1787, (a) shall hereafter be recovered by and for the use of the person who may sue or may prosecute for the same, subject however to the claim of the patrollers, agreeably to the third section of this act.

CHAP. 407.

(b For the annual meetings of the General Assembly, see 1795, c. 440.)

An act for altering and fixing the time of the annual meetings of the General Assembly of this state. (b)

When to appoint a governor, &c.

And be it further enacted, That at each annual meeting of the General Assembly hereafter, it shall be lawful to appoint a governor and other officers of state, as hath been the practice heretofore, any thing to the contrary notwithstanding.

CHAP. 408.

An act ratifying an amendment to the constitution of the United States of America.

(See amendments to the constitution, art. 11, page 75, and act of 1789, c. 304.)

Whereas the third Congress of the United States of America, at the first session thereof began and held at the city of Philadelphia, in the state of Pennsylvania, on Monday the second day of December, one thousand seven hundred and ninety-three, did pass the following resolve, two-thirds of both Houses concurring, viz: "*Resolved*, by the Senate and House of Representatives

“ of the United States of America, in Congress assembled, two-thirds of both Houses concurring, that the following article be proposed to the legislatures of the several states, as an amendment to the constitution of the United States, which, when ratified by three-fourths of the said legislatures, shall be valid as part of the said constitution, viz: The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state :”

1. *Be it therefore enacted, &c.* That the said article, viz: “ The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state,” be, and the same is hereby ratified on the part of this state, as an amendment to the constitution of the United States of America.

Amendment to constitution of the U. States ratified.

CHAP. 409.

An act giving further time for registering grants, proving deeds and mesne conveyances which have not been proved and registered within the time heretofore appointed by law.

1. *Be it enacted, &c.* That all grants for lands entered in the land-office under the present government, which have not been registered within the times heretofore appointed by law, shall and may, within two years after the passing of this act, be admitted to registration, and shall be as good and valid as if they had been registered within the time heretofore allowed by law.

Further time allowed to register grants.

(See 1790, c. 328—1796, c. 459, s. 1.)

2. *And be it further enacted,* That all deeds and mesne conveyances of lands, tenements, and hereditaments, not already proved, acknowledged and registered, shall and may within two years after the passing of this act, be acknowledged by the grantor or grantors, his or their agents or attornies, or proved by one or more of the subscribing witnesses to the same, and tendered or delivered to the registers of the counties where such lands, tenements or hereditaments are respectively situated.

Deeds, &c.

(See 1790, c. 328—1796, c. 459, s. 2.)

And all deeds and mesne conveyances whatsoever, which shall be acknowledged, or proved and registered according to the directions of this act, shall be good and valid, and take effect as fully to the use and benefit of the grantees, their heirs and assigns, as if such deeds and mesne conveyances had been acknowledged, proved and registered agreeable to the directions of any law heretofore made.

CHAP. 410.

An act prescribing the residence of the governor of this state.

Whereas it is proper that the principal officers of the state should reside at the seat of government :

Council of state
to be convened
at Raleigh.

1. *Be it enacted, &c.* That whenever the governor shall conceive it necessary to convene the council of state, such meeting shall be in the city of Raleigh, unless an invasion, insurrection or contagious disease shall render it advisable to call them elsewhere.

[*The other section is repealed and useless.*]

CHAP. 411.

An act for ceding to the United States the jurisdiction of certain lands on Shell-Castle Island, in the harbor of Occacock.

Whereas the congress of the United States have passed an act to erect a lighted beacon on Shell-Castle Island, in the harbour of Occacock, upon condition that this state will cede to the United States, a sufficient quantity of land for that purpose :

Jurisdiction of
land on Shell-
Castle ceded to
the U. States.

1. *Be it enacted, &c.* That the exclusive legislation and jurisdiction of so much land on Shell-Castle Island, as shall be purchased by the United States from the present proprietor or proprietors, for the purpose of erecting a lighted beacon thereon, is hereby ceded to the United States, and this legislature doth hereby consent to such purchase.

Not to debar
state process,
&c.

2. *And be it further enacted,* That this act shall not be construed to debar or hinder the process from any court or judge of this state from running within the boundaries of the lands so to be purchased ; nor to con-

tinue the authority of the United States over any part of the said lands, for any longer term than the said lighted beacon shall be kept up.

CHAP. 412.

An act to amend an act, entitled "An act to extend the right of trial by jury to slaves," passed at the last annual session held at Fayetteville. (See 1783, c. 194.)

Whereas it is not sufficiently ascertained by the said act what shall be the particular province and duty of the jury and of the court, on the trial of any slave or slaves under said law :

1. *Be it enacted, &c.* That it shall hereafter be the sole duty of the jury sworn on the trial of any slave or slaves, to give a verdict of guilty or not guilty, on the evidence submitted to them by the court; and on the verdict so given in by the jury, it shall be the duty of the county court, when sitting on the trial of any slave or slaves, or of three justices when they shall be sitting on any such trial, to pass judgment and sentence on the slave or slaves so tried before them, agreeably to the verdict of the jury and the laws of the country.

Duty of jury
and court on
trial of slaves.

CHAP. 413.

An act to prevent fraud in the sale of property therein mentioned.

Whereas great frauds have arisen to many of the good citizens in this state, for the want of sufficient notoriety in the sales of property taken by execution, and those made by the representatives of deceased persons : For remedy whereof,

1. *Be it enacted, &c.* That from and after the first day of April, in the year one thousand seven hundred and ninety-five, no sale of any property taken by virtue of any execution directed to the sheriff of the county or any other officer, and no sale of any property of any deceased person, and no auction or vendue, where the lands, houses or slaves of any deceased person or minor are to be rented or hired out, shall commence before eleven o'clock in the morning, or after four o'clock in the evening, of the day on which such sale or auction is

Time of selling
and hiring cer-
tain property
prescribed.

Penalty for violation.

to be made ; and any sheriff or other officer, executor, administrator, guardian or other person, who shall make any sale contrary to the true intent and meaning of this act, shall forfeit and pay the sum of one hundred pounds ; to be recovered by any person prosecuting for the same, with costs of suit, in any court of record in this state.

Certain sales, renting, &c. to be by auction.

2. *And be it further enacted*, That from and after the said first day of April, in the year one thousand seven hundred and ninety-five, all sales of property of deceased persons, and the renting and hiring out of all houses, lands, and slaves of any deceased person or minor, shall be made and done by way of public vendue or auction ; and all executors, administrators and guardians are hereby directed and required, that previous to all such sales and auctions, they shall give sufficient notice thereof, by advertising the same in three or more public places in the counties where the same are respectively to be made, at least ten days before the day of such sale or auction. *Provided always*, That nothing in this

Due notice to be given.

Proviso as to powers given by will.

act contained, shall be construed to extend in any manner to executors in cases where discretionary powers are vested in them by the will of their testator.

CHAP. 414.

An act directing the mode of recovering debts of twenty pounds and under.

Whereas the present mode of recovering debts of twenty pounds and under in this state, is laid down and contained in sundry acts and clauses of acts, passed at different sessions of the General Assembly, whereby such mode is rendered complex and difficult to be understood ; and it being proper and necessary that laws which affect the property of a great majority of the citizens, should be as plain and easy of comprehension as the nature of the case will admit ; therefore, in order to bring into view, and comprehend in one act, all that may relate to the recovery of such debts :

Jurisdiction of a justice 20l. and under.

1. *Be it enacted, &c.* That all debts and demands of twenty pounds and under, for a balance due on any speciality, contract, note or agreement, or for goods, wares and merchandize sold and delivered, or for work

or labour done, or for specific articles, whether due by obligation, note or assumpsit, are hereby declared to be cognizable and determinable by any one justice of the peace out of court, who may give judgment thereupon, and award process of execution against the goods and chattels, lands and tenements, or body of the party cast; which process shall be executed and returned by the sheriff, constable or other lawful officer, to whom the same may be directed, in the same manner as other writs of fieri facias or capias ad satisfaciendum are to be executed and returned; but such judgment shall be subject nevertheless to the appeal of either party, (a) to the next court of pleas and quarter-sessions of the county in which such judgment may be given; the party praying such appeal first giving sufficient security for prosecuting the same with effect: Whereupon an issue shall be made up and tried the first court, by a jury of good and lawful men, in the same manner as other jury causes are tried, unless sufficient cause be shown on affidavit for a continuance. *Provided always*, That where a judgment shall be given by a justice of the peace as aforesaid, execution thereon shall be stayed in the following manner, (b) to wit: For all sums not exceeding two pounds, twenty days; for all sums above two pounds, and not exceeding five pounds, sixty days; for all sums above five pounds, and not exceeding ten pounds, one hundred and twenty days; and for all sums above ten pounds, and not exceeding twenty pounds, six months. And for the true and faithful payment thereof, with interest and costs, the party praying such stay of execution, shall, if required, give sufficient security; and the acknowledgment of such security, entered by the justice, and signed by the party, shall be sufficient to bind him; and if the judgment shall not be discharged at the time to which the execution has been stayed, then it shall be lawful for the justice who has possession of the judgment, to issue execution as aforesaid against the principal and securities.

2. *And be it further enacted*, That in all warrants issued by a justice of the peace, against any person or persons whatsoever, executors and administrators excepted, the sheriff, constable or other officer shall be commanded to take the body of the person therein mentioned as defendant, if to be found in his county, to answer the complaint of the plaintiff in such warrant, be-

(Increased by 1802, c. 60, s. 1, and 1803, c. 627, s. 1.)

(For suits on former judgments, see 1802, c. 609, s. 3, and 1803, c. 627, s. 1. For interest on judgments, see 1803, c. 627, s. 4.)

Subject to appeal, &c. (a See 1802, c. 609, s. 4—1812, c. 832.)

Stay of execution.

(b See 1802, c. 609, s. 4—1803, c. 627, s. 2.)

Security for stay, &c.

Officer's duty in executing a warrant.

fore some justice of his county ; and such officer, when required by the plaintiff, shall take bond, with sufficient security, of the party arrested, in double the sum for which such person shall be held in arrest, (which sum and how due shall be expressed in the warrant,) conditioned for his or her appearance at a certain time and place therein to be specified, before some justice of the county where the warrant issued ; which bond shall be assigned by such officer to the plaintiff, and returned with the warrant, and shall be filed by the justice that shall try the warrant, with the other papers in the suit ; and in case the sheriff, constable or other officer shall fail or neglect to take such bond, with security as aforesaid, he shall be held and deemed special bail, and the plaintiff may proceed to judgment against the bail according to the rules hereinafter prescribed.

Bail bond.

In case of neglect, the officer held as bail.

Persons refusing to give bail, to be committed to gaol.

Time and notice of trial, &c.

(a See 1803, c. 627, s. 3, 5 ; 1802, c. 609, s. 4.)

Officer to notify plaintiff of trial, &c.

3. *And be it further enacted*, That when any sheriff, constable or other officer shall serve a warrant on any person or persons who shall refuse to give bond and security for his or her appearance as aforesaid, such officer is hereby required to commit such person or persons to the gaol of his county, in order that he may have such person or persons forthcoming at the day appointed for trial, and it shall be the duty of such officer to produce his prisoner at such trial ; and all warrants, whether by summons, arrest, or attachment, shall be heard and determined on the day appointed by the officer serving the warrant as aforesaid ; (a) which day shall be on or before the return day set forth in the warrant, unless the justice shall for good reasons put off the trial to some other day, at his discretion : (a) And in case the plaintiff shall fail to attend or prosecute his suit, on the day appointed as aforesaid, the defendant appearing shall be discharged. (a) *Provided*, and it is hereby declared to be the duty of the officer serving a warrant, to notify the plaintiff of the time and place appointed to try and determine the cause. *Provided also*, That when the sheriff, constable or other officer shall have committed any defendant to gaol as aforesaid, it shall be the duty of such officer to give immediate notice thereof to some justice in the county, and such justice shall appoint a day for the trial ; and notice of the time of such trial shall be given and served on the plaintiff by the officer who served the warrant.

4. *And be it further enacted*, That all bail taken ac-

according to the directions of this act, shall be liable to the recovery of the plaintiff; but the plaintiff, after final judgment, shall not take out execution against the bail, until an execution against the body of the defendant be first returned by the sheriff, constable or other officer, that the defendant is not found in his county, and not until a notice in writing issued against the bail by the justice who has possession of the papers in the original suit, hath been made known to the bail; and after the return of such execution against the principal and notice against the bail, execution may issue against the principal and bail, or any of them, or any of their estates, unless the bail shall make it appear that the principal is dead, or that the judgment has been satisfied, or unless the bail shall surrender the principal at or before the return of such notice to the officer who served the notice; in which latter case the justice shall commit the principal to the gaol of his county, until he shall satisfy the judgment and costs; and for serving such notice the officer shall be allowed four shillings.

Bail how to be taken and proceeded against.

Officer's fee for serving notice.

5. *And be it farther enacted,* That such bail shall at any time before final judgment had against him, have full power and authority to arrest the body of his principal, and secure him until he shall have an opportunity of surrendering him in discharge of himself to the officer who made the arrest or served the notice; and such officer is hereby required to receive such surrender, and hold the body of the defendant in custody as if bail had never been given.

Bail may surrender the principal.

And whereas by neglect of constables many warrants are not executed and returned in due time, to the great delay of justice:

6. *Be it therefore enacted,* That in future all warrants shall be made returnable on or before thirty days from the date thereof. (Sundays excepted,) and not after: and it shall be the duty of the sheriff, constable or other officer to whom any warrant may be directed, to execute and return such warrant for trial on or before such day, if the person or persons therein named shall be found in his county.

Warrants when returnable.

7. *And be it farther enacted,* That in causes where by this act a justice of the peace has jurisdiction, on complaint being made on oath by any person or persons, his or their agent, attorney or factor, that any person hath removed or is removing him or herself out of the

Where attachment may be issued.

county privately, or so absconds or conceals him or herself, that the ordinary process of law cannot be served on such debtor; and if such plaintiff, his, her or their agent, attorney or factor, further maketh oath to the amount of his, her or their debt, or demand, to the best of his, her or their knowledge and belief, it shall and may be lawful for any justice of the peace, and he is hereby empowered and required, to grant an attachment against the estate of such debtor, wherever the same may be found in his county, or in the hands of any person or persons indebted to, or having any of the effects of the defendant, or so much thereof as shall be of value sufficient to satisfy the debt or demand, and costs, of such complaint; which attachment shall be returnable before some justice of the peace on or before thirty days after the date thereof, to be proceeded on as hereafter directed. *Provided always,* That every such justice, before granting such attachment, shall take bond with sufficient security of the party for whom the same shall be issued, his, her or their agent, attorney or factor, payable to the defendant, in double the sum for which the complaint shall be made, conditioned to satisfy all costs which shall be awarded to such defendant in case the plaintiff shall be cast, and also all damage which may be recovered against the plaintiff in any suit or suits which may be brought against him or her for wrongfully suing out such attachment; which bond, together with the affidavit of the party complaining, subscribed with his or her proper name, shall be filed by the justice who shall try the cause, with the attachment and other papers relative thereto; and the proceedings thereon shall be had in a summary way, in the same manner as on warrants; and the defendant may replevy the property so attached, by giving bond and security to the officer serving such attachment, conditioned to appear before some justice of the peace, to abide by and perform the order or judgment that shall be made thereon.

Bond to be taken before attachment is granted.

Proceedings thereon, &c.

Proceedings against garnishee &c.

8. *And be it further enacted,* That where the sheriff, constable or other officer shall serve an attachment in the hands of any person or persons supposed to be indebted to, or supposed to have any of the effects of the party or parties absconding or residing out of the state, he shall at the same time summo such person as garnishee, in writing, to appear before the justice before

whom the attachment shall be returned, then to answer on oath relative to what he or she is indebted to the defendant, and what effects of the defendant he or she hath in his or her hands, and had at the time of serving such attachment, and what effects or debts of the defendant there are in the hands of any other person, and what person, to his or their knowledge or belief: And where any attachment shall be served in the hands of any garnishee in manner aforesaid, it shall be lawful upon his, her or their appearance and examination, to enter up judgment and award execution against such garnishee, for all sums of money due to the defendant from him or her, and for all the effects or estate of any kind belonging to the defendant in his or her possession or custody, for the use of the plaintiff, or so much thereof as shall be sufficient to satisfy the debt and costs, and all charges incident to levying and securing the same; and all the goods and effects whatsoever in the hands of any garnishee or garnishees, belonging to any defendant, shall be liable to satisfy the plaintiff's judgment, and shall be delivered to the sheriff or other officer serving the attachment: And when any garnishee summoned as aforesaid, shall not appear and discover on oath as by this act directed, it shall be lawful for the justice to issue a notice in writing for the said garnishee to appear at such place and on such day as he may appoint, to shew cause why judgment shall not be entered and execution awarded against him; which notice shall be served by the sheriff, constable or other officer, and upon such notice being duly executed and returned, if the garnishee shall fail to appear and discover upon oath in manner aforesaid, the justice shall give judgment against such garnishee for the plaintiff's full demand, with costs, and award execution accordingly.

9. *And be it further enacted,* That where any property attached as aforesaid, shall be claimed by any other person or persons, and to determine the right the intervention of a jury may be necessary, the party claiming such property may appeal to the next county court, where such right upon an issue joined, shall be tried by a jury of good and lawful men; the party claiming first giving bond with sufficient security, to pay all costs and charges, in case he, she or they shall fail to prosecute the said suit with effect; and the verdict of the

Proceedings
where property
attached is
claimed.

jury in such case shall be conclusive as to the parties then in court, and the court shall give judgment accordingly.

Disputed garnishments to be returned to court.

10. *And be it further enacted*, That when any garnishee shall on his or her garnishment, deny that he or she has in his or her possession any property of the defendant, and the party plaintiff in such attachment, shall on affidavit suggest to the justice, that such garnishee owes to, or has property in his or her hands belonging to the defendant, or when any garnishee shall on his or her garnishment, make such a statement of facts that the justice before whom such garnishment shall be made, cannot proceed to give judgment thereon, then and in either of these cases, the justice shall return the attachment and other papers to the next county court to be held for his county, and the court shall order an issue or issues to be made up and tried by a jury, and the court shall give judgment on the verdict of the jury as in other cases.

Goods attached may be replevied.

11. *Be it further enacted*, That when any goods or other estate shall be attached by virtue of any attachment issued agreeably to the directions of this act, it shall and may be lawful for the defendant or defendants, his, her or their attorney, agent or factor, to replevy the same, by giving bond with sufficient security to the sheriff, constable or other officer, serving such attachment; which said bond the sheriff, constable or other officer is hereby empowered and required to take, to appear before the justice to whom such attachment is returnable, and to abide by, perform and satisfy the order and judgment of such justice: And when the estate attached, shall by three freeholders of the county, to be summoned by the sheriff, constable or other officer for that purpose, be certified on oath to be perishable, and the person or persons to whom it belongs, his, her or their attorney, agent or factor, shall not within thirty days after the serving such attachment, replevy the same, then such estate shall be sold at public vendue by the sheriff, constable or other officer; he having first advertised such sale at the court-house, and other public places in his county, at least ten days before the sale: And the money arising from such sale, shall be liable to the judgment obtained upon such attachment, and shall be retained and kept by the officer to wait the event of such judgment.

When perishable to be sold.

And whereas it often happens, that garnishees declare that they have in their hands property of the defendant or defendants of a specific nature, which renders it necessary that provision should be made for ascertaining the value of such specific property, so as to enable the party plaintiff where he shall have his recovery, to sue out execution for the same: For remedy whereof,

12. *Be it enacted*, That from and after the passing of this act, whenever any garnishee shall on oath confess, that he or she has in his or her hands any property of the defendant of a specific nature, or is indebted to such defendant by any security or assumption for the payment or delivery of tobacco or other specific article, then in either of those cases, the justice before whom such garnishment shall be made, shall immediately order three freeholders to be sworn to enquire of the value of such specific property, and their verdict shall subject such garnishee to the payment of such valuation, or so much thereof as shall be sufficient to satisfy the debt and costs of the party at whose instance such garnishee shall have been summoned. *Provided always*, That such garnishee who may on oath confess, that he or she has in his or her hands any specific property of the defendant, as left or deposited in his or her possession by such defendant, may always exonerate him or herself by delivering such property to the sheriff, constable or other officer who levied such attachment or may levy the execution issued thereon. *Provided always*, That when judgment shall be entered up against any garnishee, declaring as aforesaid, he shall on giving security if required, have the same stay of execution as such garnishee would have been entitled to, had he been original defendant in the suit.

Proceedings where garnishee has specific property, &c.

Garnishee may deliver specific property to the officer.

Garnishee may stay execution.

13. *And be it further enacted*, That in all suits commenced by attachment as in this act directed, which shall be returnable before a justice of the peace, the justice to whom such attachment shall be returned, shall stay all proceedings thereon for the space of thirty days, unless the defendant to such suit by attachment, his agent or attorney, shall replevy the goods, chattels or property so attached.

Stay on attachment 30 days

And whereas by the present mode of proceeding on attachment, the person or persons who enter themselves as special bail on replevying the property, become special bail to answer the whole demand of the plaintiff:

Bail on replevying liable only for the property they hold, &c.

14. *Be it therefore enacted*, That the person or persons entering themselves as special bail on replevying property attached, shall only be held liable to answer the value of the property which he, she or they as aforesaid do respectively hold or have returned in the garnishment, and no more; but the security replevying, shall not avail themselves of paying the value of the property so replevied, unless such security shall on the return of such attachment to the justice, require that such value should be ascertained by an enquiry; which enquiry the justice shall have executed on request as aforesaid, by three freeholders by him summoned to assess and value such property on oath, notice being given to the plaintiff in attachment, his agent or attorney, at least five days before such enquiry shall be executed.

Justice to advertise when persons reside out of county.

15. *And be it further enacted*, That when any attachment issued agreeably to this act, shall be returned to any justice of this state as levied on the goods and chattels, lands and tenements of any person or persons residing without the county in which such attachment issued, it shall be the duty of the justice to direct advertisements of the same for the space of thirty days.

Process not to be set aside for want of form.

16. *And be it further enacted*, That no attachment warrant, or other process, issued by a justice of the peace, shall be set aside for the want of form, if the essential matters required are set forth in such process.

Security on appeals how taken, &c.

17. *And be it further enacted*, That in all cases where appeals shall be granted from the judgment of a justice, the acknowledgment of the security, and subscribed with his or her proper hand-writing, attested by the justice, shall be sufficient to bind the security to abide by and perform the judgment of the court; and where judgment shall be against the appellant, the same shall be entered on motion against the security, and execution shall issue against the principal, or against both principal and security, at the option of the plaintiff. And whereas, in many instances, plaintiffs appeal for the purpose of harrassing and injuring the defendant by accumulating costs and charges: For remedy whereof, in all cases of appeals by the plaintiff, such appeal shall be at the costs of the plaintiff, unless the court, on the trial, shall be of opinion that there was sufficient cause for such appeal, and in such case the plaintiff shall recover his costs on motion.

Costs on appeals.

18. *And be it further enacted*, That when any justice of the peace shall grant an appeal to the county court, it shall be the duty of such justice to return such appeal on or before the second day of the court to which it may be returnable; and he is hereby authorised and required, on application of either of the parties, to issue subpœnas, directed to the sheriff, or other lawful officer, in any county in this state, for witnesses to appear and give testimony at the court to which such appeal is returnable; and the officer to whom such subpœna shall be directed, and the witnesses summoned in consequence thereof, shall be under the same rules and regulations, and subject to the same penalties, and entitled to the same pay, privileges and emoluments as if such subpœna had issued from the clerk of the court to which such appeal shall be returnable.

Justice to return appeals to court and issue subpœnas for witnesses.

And whereas lands are often sold in consequence of judgments given by a justice of the peace, therefore it becomes necessary that a record of such judgment should be made in some proper office, so that it may appear of record in future by what authority such lands and tenements were sold and conveyed: Therefore,

19. *Be it enacted*, That executions issued by a justice of the peace against the estate of any person or persons, shall be directed to the sheriff, constable or other lawful officer, commanding him, that of the goods and chattels of the party cast, he make such sum or sums of money therein mentioned, or for want of such goods and chattels to satisfy said execution, then he levy on the lands and tenements of such person or persons, and make return thereof to the justice who issued the same, setting forth on the execution the money he has made of the goods and chattels, and what lands and tenements he has levied on, where situate, on what water-course, and whose lands it is adjoining; (a) and the justice to whom the return is made, shall return such execution, with all other papers on which the judgment was given, to the next court to be held for his county; which land shall by order of said court, be sold by the sheriff of the said county, or so much thereof as may be sufficient to satisfy such judgment, in the same manner as real property is sold by writs of *fieri facias* or *venditioni exponas* issuing from such court; and the clerk of the court where such papers are returned, shall in a well bound book kept for that purpose, record the whole

Executions how to be issued, returned, &c.

(a) Executions to be returned in 3 months—see 1803, c. 627, s. 6.)

of the papers and proceedings had before the justice; for which he shall be allowed the same fee as for entering a judgment in any other suit.

Execution against persons removing out of the county, how proceeded on, &c.

20. *And be it further enacted*, That when any execution shall issue to a sheriff, constable or other officer, in virtue of a judgment obtained before any justice of the peace, and the person or persons against whom such judgment may be obtained shall remove him or themselves to any other county within this state, and the sheriff or other officer cannot find any property whereon to levy said execution, then and in such case the said sheriff or other officer shall return such execution to the next court to be held for said county, and the plaintiff on application shall be entitled to an execution for the whole or any part of said execution which remains unpaid by the return of such officer; (a) and the clerk by order of the said court shall make a record of the same, and issue execution to the county where the defendant or defendants reside, in the same manner and under the same rules as in cases of judgments obtained in said courts.

(a Amended; see 1797, c. 477.)

Witnesses to be summoned, &c.

(For depositions, see 1803, c. 627, s. 7.)

21. *And be it further enacted*, That any justice of the peace is hereby authorised and required, on application of either plaintiff or defendant named in any original process issued by a single justice, to direct the sheriff, constable or other lawful officer, by an order in writing on the process, to summon witnesses to appear and give testimony in such suit, at the time and place appointed for trial; and such witnesses failing to appear and give evidence, shall forfeit and pay the sum of two pounds current money to the party at whose instance he was summoned, and further be liable to the action of the party aggrieved, for damage sustained for his non-attendance; which fine shall be recovered before any justice of the peace, unless such witness, on affidavit or otherwise, shall show sufficient cause to the contrary, subject nevertheless to an appeal to the county court as in other cases.

Penalty on defaulters.

Fees for serving a warrant, &c.

22. *And be it further enacted*, That the sheriff, constable or other officer serving any warrant, shall be entitled to the following and no other or greater fees for his services, to wit: For serving every warrant, for each person named therein, four shillings; summoning every witness, two shillings; for every execution, four shil-

lings; for every attachment levied, five shillings; for every bail bond, one shilling.^(a)

23. *And be it further enacted.* That all and every act, parts and clauses of acts, which are contrary to the meaning, and come within the purview of this act, be and the same are hereby repealed and made void. *Provided always.* That this act shall not begin to operate, or be in force until from and after the first day of August next.

(a For other fees, see ante. s. 4; and list of fees, c. 403.) Former acts repealed. This act when to take effect.

CHAP. 415.

An act to explain and supply the deficiencies of certain acts of Assembly respecting sales made by executors and administrators.

Whereas doubts have been suggested respecting the operation of certain acts of Assembly, authorising and directing the sale of personal or perishable estate by executors or administrators: For remedy whereof,

1. *Be it enacted, &c.* That the meaning and operation of the said acts are, that when the estate of any person deceased, shall be so far indebted as that the debts cannot be discharged by the monies on hand at the death of the testator, or when sale shall be deemed necessary for a just and proper distribution or division of such personal estate, that then it is and shall be the duty of every executor or executrix, administrator or administratrix, to sell and dispose of the goods and chattels of his or her testator or testatrix, or intestate, first obtaining an order of the court of the county for that purpose, for the most that may be gotten for the same, by public sale, having first advertised the same at the court-house and four other public places within the county, at least twenty days before the sale; and shall for enhancing the price thereof, give not less than six months credit, upon bond and security given; and that such executor or executrix, administrator or administratrix, shall after the time of such payment is past, take and pursue all lawful ways and means to recover and receive the money so due as aforesaid, or otherwise shall be chargeable and answerable for the same; and that such monies when received, shall be liable to the satisfaction of judgments previously obtained and entered up as a

Duty of executors, &c. in sale of property.

(See 1723, c. 15, s. 2, 3; 1793, c. 391.)

To advertise 20 days.

To give six months credit at least, &c.

judgment when assets should come to the hands of the executor or administrator.

But not to affect the powers given by will.

2. *And be it further enacted*, That nothing in this act shall be construed to affect the powers, trusts or authorities of an executor or executrix derived from the will of his or her testator or testatrix.

Naming a person executor does not discharge his debt to testator.

3. *And be it further enacted*, That the naming or appointing any person executor, shall not be considered as a discharge of any debt or demand due from the person so named as executor to the testator.

CHAP. 416.

An act making provision for the redemption of the certificate debt of the state.

Entries of lands, 50s. per 100 acres, how to be paid, &c.
(a See 1790, c. 325, s. 2; 1818, c. 970.

1. *Be it enacted, &c.* That from and after the passing of this act, all lands entered in this state shall be paid for at the rate of fifty shillings per hundred acres.(a) And it shall and may be lawful for any person making entry of vacant lands in this state hereafter, to pay to the officer appointed by law, the purchase money thereof, either in cash or in certificates, at his option, calculating both the principal and interest of the certificates up to the date of the entry. *Provided*, That the certificates issued at Warrenton, in one thousand seven hundred and eighty-six; those issued by Patrick Travers, commissioner of Cumberland county; and those commonly called Western or Chickamauga certificates, shall not be received in payment for any entries made in pursuance of this act.

Certain certificates not receivable.

And to the end the amount of the outstanding certificate debt may be ascertained, and the state thereby enabled to make provision commensurate to its redemption:

Certificates to be registered, &c.

2. *Be it further enacted*, That all persons holding certificates of the debt of North-Carolina, shall, on or before the first day of December next, present them at the comptroller's office, and cause them to be registered: which the comptroller is hereby directed to do in a book to be purchased and kept for that purpose; and for such his services he shall be allowed by the next Assembly, it being out of the ordinary line of his duty. And that

(Obsolete.)

all acts and parts of acts coming within the meaning and purview of this act, are hereby repealed and made void.

CHAP. 417.

An act to prevent the issuing of grants for lands entered with any of the entry-takers in this state, in certain cases.

Whereas it is represented to this General Assembly that great quantities of land have been entered with the different entry-takers within this state, and the purchase money thereof not previously paid, which conduct is not warranted by law:

1. *Be it therefore enacted, &c.* That the secretary of state is hereby directed not to issue any grants for land entered with any of the entry-takers in this state, subsequent to the first day of January, in the year one thousand seven hundred and ninety-four, until the person claiming such land as aforesaid shall produce to the secretary a certificate from the comptroller, certifying that a return from the entry-taker of the county where the lands lie, hath been made in his office; also the number of the entry and the amount thereof; and shall further produce to the secretary a receipt from the treasurer, certifying that the purchase money for such land hath been fully accounted for and paid by the entry-taker aforesaid, any thing to the contrary notwithstanding. *Provided always,* That nothing herein contained shall be construed to prevent any person who hath *bona fide* paid to the entry-taker the purchase money for his land, from obtaining a title thereto. And the evidence of this payment shall be the receipt of the entry-taker, and the affidavit of the enterer or grantee, or his assigns, that he hath paid or caused to be paid to the entry-taker in whose office the entry was made, the whole amount of the money due for such land so entered; which receipt and affidavit shall be filed in the secretary's office.

Duty of secretary in issuing grants, &c.

(See 1797, c. 483, s. 1, and the acts there cited.)

Receipt for purchase money.

Evidence of payment.

And whereas it frequently happens that the purchase money for lands, after being paid to the entry-taker, is not accounted for by him to the public treasurer:

2. *Be it also enacted,* That it shall not hereafter be lawful for any entry-taker to receive from the person

Entry-taker to take his fees

only, and money to be paid treasurer before the grant issues.

(See 1795, c. 445, s. 1, 2.)

Warrants not to be removed out of the county.

Former acts repealed.

Warrants for entries in Armstrong's office to be issued by comptroller. (See 1796, c. 456, 1797, c. 489, s. 4.)

entering land in his office, more than his own fees ; but it shall in all instances be the duty of the person entering, to pay the purchase money to the treasurer and take his receipt for the same, previous to the warrant's issuing upon such entry ; and the secretary of state is hereby directed not to issue any grant for lands upon entries hereafter to be made, until the party applying for the same shall produce to him a certificate from the comptroller that such payment hath been made.

3. *And be it further enacted,* That in no entry made of land within the present bounds of this state, shall the warrant be removed or laid on other lands than those specially located and described in the first instance upon the entry-taker's books, except in the same county in which the entries were originally made.

4. *And be it further enacted,* That all acts, sections and clauses of acts, coming within the purview and meaning of this act, be and the same are hereby repealed and made void.

5. *And be it further enacted,* That the comptroller be and he is hereby authorised and required to issue warrants on the entries made in the late entry-office of John Armstrong, in all cases where warrants have not heretofore issued, and in which the purchase money or certificates have been paid.

CHAP. 418.

(See 1793, c. 382, s. 3.)

Justice not to vote on his own election, &c.

An act to prevent any justice of the peace from voting in his own election to the office of clerk of the county court, register, entry-taker, surveyor, county trustee or ranger.

1. *Be it enacted, &c.* That from and after the passing of this act it shall not be lawful for any justice of the peace, being a candidate for the office of a county court clerk, register, entry-taker, surveyor, county trustee or ranger, of his own county, to vote or sit on the bench at the election ; and if any justice of the peace shall hereafter presume to sit on the bench or vote in such election, his vote shall not be counted, and he shall forfeit and pay for every such offence the sum of fifty pounds, to be recovered by action of debt, one half to the person suing for the same, and the other half to the use of the county : any law, usage or custom to the contrary notwithstanding.

CHAP. 419.

An act to amend the act approbating the new great seal of the state, (See 1795 c. 396.)
 passed at Fayetteville the last annual session.

Whereas a proper screw has not yet been procured to make impressions with the new great seal:

1. *Be it enacted, &c.* That all grants, commissions, proclamations and other public acts which have been attested and authenticated with the old seal, since the time prescribed in the said act for the use of the new great seal, or which may be so attested and authenticated, shall be good and valid in law to all intents and purposes. And the governor is hereby authorised to continue the use of the old seal until he shall be able to procure a screw to make impressions with the new one.

Impressions
with old seal
authenticated,
&c.

And whereas the said act directs that the new great seal of the state shall be deposited in the secretary's office, which is contrary to a provision in the constitution:

2. *Be it enacted,* That so much of the said act as directs the said seal to be deposited in the secretary's office, be and the same is hereby repealed and made void.

Former act re-
pealed.

CHAP. 420.

An act to amend an act, entitled "An act to carry into effect the ordinance of the convention held at Hillsborough, in July, one thousand seven hundred and eighty-eight, entitled An ordinance for establishing a place for holding the future meetings of the General Assembly, and the place of residence of the chief officers of the state." (See c. 297, and 1791, c. 337, 1792, c. 367, §. 4.)

Whereas the said act requires a majority of the commissioners appointed under the said act, to sell and dispose of the lots in said town and execute deeds for the same, which number cannot conveniently attend:

1. *Be it enacted, &c.* That any three of the said commissioners shall be competent, and have full power to sell and dispose of the lots which remain unsold, and also to execute deeds for the same to the purchaser or purchasers; and to do and perform all acts and things respecting the sale and conveyance of said lots, which a majority of said commissioners could or might do.

Three commis-
sioners empow-
ered to sell lots,
&c.

CHAP. 421.

An act to empower the several county courts in this state to establish fairs therein.

Whereas frequent applications from particular counties are made to the legislature to establish fairs therein, thereby producing a delay of public business, when they might as well be established by the county courts :

1. *Be it therefore enacted, &c.* That from and after the passing of this act, it shall and may be lawful for the several county courts in this state, to appoint a fair or fairs in their respective counties, at such place or places as they may judge most proper for the convenience of the inhabitants, so as to afford an opportunity and give encouragement to industry, by collecting the inhabitants for the purpose of exchanging, bartering and selling of all such articles as they may wish or be necessitated to dispose of.

2. *And be it further enacted,* That when any of the said courts may think proper to establish a fair, they shall nominate and appoint commissioners to regulate and conduct the same, by drawing up and forming a system of bye-laws for the government thereof, to be approved of by said court and entered of record ; which rules so formed as aforesaid, shall be considered as valid and as effectual as if they had been expressed by an act of Assembly for that special purpose. *Provided nevertheless,* That said rules shall not be contrary or inconsistent with the law of the land.

3. *And be it further enacted,* That the inhabitants of every county wherein any fairs shall be so established, shall have free liberty and power to attend the same, dispose, exchange or barter any article or articles whatsoever therein, without any restraint or distinction whatever, subject nevertheless to such rules as the commissioners aforesaid or a majority of them, shall or may form for the regulation thereof.

4. *And be it further enacted,* That a majority of the acting justices shall in all cases be present when any order or decree of the court is passed for establishing such fair or fairs ; and that no less number than a majority shall have such power and authority as aforesaid ; and a majority of the commissioners who may be ap-

County courts
may appoint
fairs, &c.

Commissioners
to regulate the
same, &c.

Inhabitants to
have liberty of
the same.

Majority of jus-
tices necessary.

pointed to regulate the same, shall in all cases be a quorum sufficient to transact any business relative thereto. And a majority of the commissioners.

CHAP. 422.

An act to explain and amend an act, entitled "An act to empower the county surveyors to make surveys and returns in the manner therein mentioned."(a) (a 1784, c. 202.)

1. *Be it enacted, &c.* That all the lands in this state lying to the eastward of the line of the ceded territory, (b) shall be deemed and considered as coming within the meaning and purview of the said act. (b See the act of cession, 1789, c. 299, s. 1.)

CHAP. 423.

An act to alter and amend part of an act, passed at Newbern in the year one thousand seven hundred and seventy-seven, entitled "An act for establishing courts of law, and regulating the proceedings therein."(c) (c C. 115.)

Whereas it is provided by the sixty-sixth clause of the said act, that the vacancy of the county clerk shall be filled by the court of pleas and quarter sessions where such vacancy happens, a method subject to abuse, inasmuch as the power may be exercised by a very small number of the justices: For remedy whereof,

1. *Be it enacted, &c.* That from and after the passing of this act, when any vacancy shall happen in the office of clerk of the county, a majority of the justices of the court of pleas and quarter-sessions of the county where such vacancy shall be, shall appoint a person of skill and probity to fill such vacancy; and all clerks of the said courts shall hold their offices during good behaviour. Majority of justices to appoint a clerk, &c.

2. *And be it further enacted,* That so much of the before recited clause as comes within the meaning and purview of this act, be and the same is hereby repealed and made void.

CHAP. 424.

(See 1793, c.
389.)

An act to amend an act, entitled "An act to amend such parts of the act, entitled, An act for establishing courts of law, and for regulating the proceedings therein, as may relate to proceedings on attachments; and for amending an act for making process in equity effectual against persons who abscond, and who reside without the limits of the state, and for better regulating the proceedings in the court of equity."

Whereas by the above recited act many garnishees as well on original as judicial attachments, are made liable to pay money, when in fact their contract or assumption was only for the payment or delivery of specific articles :

Garnishments
for specific ar-
ticles due, how
to be proceeded
on.

1. *Be it therefore enacted, &c.* That when any person summoned as a garnishee, shall upon his or her garnishment, state that he or she is indebted to the defendant by specialty or assumption for the payment or delivery of any specific article, that he hath tendered the same agreeable to contract, and that it was refused by the defendant; or that he then was and had always been ready to deliver the same, or that he had such specific article at the time and place specified in such covenant or agreement ready to be delivered, and that he was still ready to deliver the same; and when such garnishment shall be admitted by the plaintiff, or found by a jury, then in any of the said cases such garnishee shall and may be exonerated by the delivery of such specific article or articles to the sheriff who levied the attachment, who shall proceed as if the attachment had been originally levied on such article or articles.

And when due
at a future day.

2. *And be it further enacted,* That when any garnishee shall declare on his garnishment, that the money or specific article due by him or her will become payable or deliverable at a future day, and the same shall be admitted by the plaintiff, or found by the jury, then and in such case conditional judgment shall be entered against such garnishee, and the plaintiff may proceed to ascertain his demand by judgment against the defendant, but shall not take final judgment against such garnishee without notice by scire facias, on which the plaintiff may proceed as in other cases; and that so much of the before mentioned act and all other acts and parts of acts that come within the purview and meaning of this act, are hereby repealed and made void.

CHAP. 425.

An act to repeal the third section of an act, passed at Fayetteville, in the year one thousand seven hundred and ninety, entitled, "An act to repeal all acts, clauses and parts of acts of the General Assembly of this state as relate to classing of tobacco."

1. *Be it enacted, &c.* That the proprietors of condemned tobacco shall have the privilege of letting said tobacco remain in the warehouse six months after the inspection thereof, and shall be entitled to have such tobacco re-inspected if he thinks proper.

Condemned tobacco may remain in warehouse 6 months, &c.

[*The other parts of this act are omitted as unnecessary.*]

CHAP. 426.

An act to ascertain the pilotage which shall be allowed the pilots at Occacock Inlet, and the several sounds and rivers to which vessels go which come in over said inlet.

(See 1783, c. 194, and acts there referred to.)

Whereas the fees heretofore allowed to pilots at Occacock Inlet, is found inadequate to their trouble and risk :

1. *Be it therefore enacted, &c.* That from and after the passing of this act, all pilots legally authorised to take charge of vessels to bring in over Occacock Bar, or up to either of the ports of Newbern, Washington, Edenton or Camden, shall be entitled to demand and receive from the commander of such vessel as they may have had charge of, the following pilotage, (a) to wit: For every vessel or vessels drawing any draft of water under eight feet, from the outside of the Bar into Beacon-Island Road, or Wallace's Channel, at the option of the commander, five silver dollars; and for every ship or vessel that draws eight feet water or more, and under twelve feet, five-eighths of a dollar per foot; and for every ship or vessel drawing twelve feet water or more, one dollar per foot; and the same fees out over the Bar as in; and for every ship or vessel over either of the Swashes, two dollars; and for every ship or vessel from the mouth of the Swash to either of the ports of Newbern or Washington, drawing any draft of water, one dollar per foot; and for every ship or vessel from the mouth of the Swash to the port of Edenton, twelve dollars, and to the port of Camden, ten dollars; and the same allowance down as up.

Rates of pilotage.

(See rates for piloting vessels not of the state, 1805, c. 691.)

(a Amended; see 1798, c. 515.)

Branch pilot to be paid if he boards a vessel though the master should refuse to take a pilot.

2. *And be it further enacted*, That if a branch pilot shall go off to any vessel bound in, and offer to pilot her in over the bar, the master or commander of such vessel, if he refuses to take such pilot, shall pay and satisfy to such pilot, if not previously furnished with one, the same sum as is allowed by law for conducting such vessel in, provided such vessel shall be above forty tons burthen.

Former act repealed.

3. *And be it further enacted*, That so much of an act of Assembly passed at Hillsborough, in April, one thousand seven hundred and eighty-four, as comes within the purview of this act, is hereby repealed and made void.

CHAP. 427.

An act to annex part of the county of Mecklenburg to the county of Cabarrus.

Whereas it is represented by petition to this General Assembly, that it will be more convenient, and greatly contribute to the satisfaction of a number of the present inhabitants of the county of Mecklenburg to be added to the county of Cabarrus :

Part of Mecklenburg county annexed to Cabarrus.

1. *Be it therefore enacted, &c.* That all that part of the county of Mecklenburg, which shall or may be included by a line beginning at Pickens's Ford on Clark's creek, running such a course and direction as to include the following persons, and the land whereon they live, to wit, John Wilson, Robert Hope, Zaccheus Wilson, John Sloan, Nathaniel Giles, and Doctor Charles Harriess, from thence to the north-east corner of Adam Meek's dwelling-house on the Cabarrus line, so as to include the said Adam Meek in Mecklenburg county, shall be added to the county of Cabarrus, in as full and ample a manner as if the same had been included at the time of the division.

CHAP. 428.

An act to annex part of the county of Rutherford to Buncombe.

Part of Rutherford county an-

1. *Be it enacted, &c.* That from and after the passing of this act, all that part of the county of Rutherford,

west of a line beginning at the Sugar-Loaf Mountain ; from thence a direct line to the Hungary Mountain, and along said Mountain to Green-River, crossing the same ; and from thence a direct line to the South-Carolina boundary, and all that part lying to the west of the line aforesaid, shall be annexed to and considered a part of the county of Buncombe. *Provided*, That nothing in this act shall be understood to prevent the sheriff of the county of Rutherford from collecting all public taxes now due in that part of the said county, which comes within the description of this act, any thing to the contrary notwithstanding.

nexed to Buncombe.

CHAP. 429.

An act to prevent gaming-tables in the neighbourhood of the University of North-Carolina.

Whereas there is reason to believe that billiard-tables, or some other tables or devices for the purpose of playing at games of hazard, near the University of this state, would greatly tend to create idleness and dissipation among the students :

1. *Be it therefore enacted, &c.* That no person shall set up or shall keep up any billiard-table, or any other table or device for playing at any game of hazard, within five miles of the said University ; and if any person or persons shall set up any such gaming-table, or having set up the same shall continue it after the first day of May next, he or they so offending shall forfeit and pay the sum of fifty pounds, to be recovered in any court having cognizance of the same, one-half for the use of the informer and the other half to the benefit of the state.

Penalty for setting up gaming tables near the University.

Read three times, and ratified in General Assembly, }
the 7th day of February, A. D. 1795. }

WM. LENOIR, S. S.

T. BLOODWORTH, S. H. C.

Copy.—J. GLASGOW, Secretary.

Richard D.
Spaight, Esq.
governor.

At a General Assembly begun and held at the city of Raleigh, on the second day of November, in the year of our Lord one thousand seven hundred and ninety-five, and in the twentieth year of American independence : Being the first session of the said Assembly.

CHAP. 430.

An act for raising a revenue for the payment of the civil list and contingent charges of government for the year one thousand seven hundred and ninety-six ; and to amend an act, entitled, " An act to amend the revenue laws of this state," passed in December, in the year one thousand seven hundred and ninety-one.(a)

(a 1791, c. 334.)

Comptroller's
duty where sher-
iffs fail to settle
&c. agreeable
to law.

1. *Be it enacted, &c.* That in all cases of failure of a sheriff to settle his account within the time by law required, and to take the oaths prescribed by the before recited act, it shall be the duty of the comptroller, and he is hereby directed, to report immediately on the same, allowing neither commissions nor insolvents, but adding to the account the sum of one hundred pounds, as the supposed amount of such delinquent's receipts from tavern-keepers and persons failing to give in their lists of taxable property.

All entries of
land liable to
the payment of
taxes.

2. *Be it further enacted,* That all entries of land heretofore made, or which shall hereafter be made, shall be, and the same are hereby declared to be liable to the payment of taxes, and shall be returned in the same manner, and paid at the same time as other taxable property. And if any entry of lands shall be caveated, it shall in that case be the duty of the person who originally entered the land, to return the same for taxation, such caveat to the contrary notwithstanding ; and upon the caveat being determined, if the person who hath paid the taxes or returned the land for taxation, shall lose it, he shall be authorised to recover the amount paid, or which he is liable to pay, from the person in whose favor the caveat was decided.

By whom re-
turnable when
entries are
caveated, &c.

CHAP. 431.

(All repealed,
except this sec-
tion.)
(See 1812, c.
831.)

An act to amend an act, entitled, " An act for dividing the state into districts for the purpose of electing representatives to Congress," passed at Newbern, in the year one thousand seven hundred and ninety-two.

Musters on elec-
tion days declar-
ed illegal.

1. *Be it enacted, &c.* That it shall not be lawful to call or direct any regimental, battalion or company

muster, or to assemble armed men, on the day of any election, at any place appointed by law to hold elections for members of Congress or members of the General Assembly within this state, under the penalty of five hundred pounds, to be recovered of any person or persons who may call such muster or assemble such armed men, in the name of the governor for the time being, and be applied one-half to the use of the informer, and the other half to the use of the state.

Penalty for calling them on such days.

CHAP. 432.

An act to encourage the cutting of canals by subscription.

Whereas it has been demonstrated by the experience of the most improved and well cultivated countries, that opening communications by cutting canals, has been productive of great wealth and convenience: And whereas it has been represented to this General Assembly, that cutting canals through peninsulas or narrow necks of land, swamps and marshes, from one part of a river, creek, bay or sound, into the same, or from a river, creek, bay or sound, into any other river, creek, bay or sound, would greatly facilitate and encourage merchandize, and consequently contribute to the wealth and revenue of this state, by opening a more easy, safe and short conveyance for the produce of the greatest part of the country, to sea-port towns and safe harbours; and also be productive of the most salutary effects, by draining noxious marshes, swamps and lowlands, which will promote health, reclaim immense quantities of our most fertile lands, and in a peculiar manner tend to the wealth and welfare of this state, which it is the most ardent desire of this legislature at all times to promote by every useful undertaking:

1. *Be it enacted, &c.* That when any number of subscribers shall or may have agreed to cut a canal or canals, and formed themselves into a company for that purpose, and the direct and necessary course of the same shall pass through the lands of any person unknown, orphans infants, or where the owner refuses to sell so much land as may be necessary for the passage of said canal or canals, and work incident thereto, that then it shall be lawful for the aforesaid subscribers to

Manner of proceeding to obtain a passage for a canal thro' lands of persons unknown, orphans, or where the owner refuses to sell, &c.

exhibit a petition to the court of the county wherein the land lieth, setting forth the refusal of the owner or claimant, and the quantity of land required for the passage of said canal or canals and works ; whereupon the court shall, if they deem it necessary, proceed to appoint twelve freeholders, not attached to either party by consanguinity or affinity, who shall go on the premises, to view, lay off and value on oath, as much of the said land as will be sufficient for the passage of the said canal or canals and works, that is to say, they shall estimate the value of a section or small strip of land, of the length and breadth deemed necessary for the passage of the said canal or canals and works ; and they shall consider if any damage, and what, the general landed property of the proprietors of the land may sustain by cutting a canal or canals through it in the manner proposed ; and the said jury shall determine what sum of money the owner or owners of the soil ought to receive from the company so formed for cutting said canal or canals, which shall be returned under their hands and seals ; and the company shall pay down the valuation money in court for the land so laid off and obtained, and procure a record to be made thereof ; which shall be a good and effectual seisin in law, to create to the said subscribers the sole use and property in said canals ; and the money when paid into court, shall be received by the clerk and paid to the owner or owners, or to the guardian or guardians of the owners in case of infancy. *Provided*, That the said owner or owners, guardian or guardians, shall have ten days previous notice in writing, of such application, and of the order of court, to the intent they may be present at such survey and valuation. *And provided also*, That the passage of the aforesaid canal or canals shall not interfere with or take away houses, or other valuable improvements greatly to the injury of the proprietors ; and that a good bridge or bridges be made over said canal or canals, for the free use of the proprietor of the land and the public, at the expense of the company. *And provided nevertheless*, That any person or persons owning land through which any canal or canals may pass, shall not be prevented from draining their land into such canals.

Proviso^s.

Canals when cut
to be rented out

2. *And be it further enacted*, That when any of the aforesaid canals are cut, and such bridge or bridges

built, as the county court may think necessary, the company shall submit their accounts of the whole expense, to the inspection of men to be appointed by the court of the county in which the said canal or canals are cut; who shall make a report thereon, which shall be recorded in said court; and the said canal or canals shall be rented out annually, by order of said court, at public vendue, and a toll shall be fixed yearly, if required by said court, for every kind of boats and rafts; and the rent as received annually, be paid to the subscribers, in proportion to their several subscriptions, until the several payments shall amount to the sum recorded in said court or courts, with six per cent. interest thereon; then the said canal or canals, with all the appurtenances thereunto belonging, shall be free from all toll, for the good and use of the public; any law, usage or custom to the contrary notwithstanding.

by order of court, until the cost of cutting and interest be paid.

3. *And be it further enacted*, That if any canal or canals shall not be finished within seven years from the time of obtaining the order of the county court for said purpose, then such lands so laid off, shall revert to the original owner or owners, their heirs or assigns; any thing herein to the contrary notwithstanding.

Time allowed for completing canals.

4. *And be it further enacted*, That when any sum or sums of money shall be subscribed for the cutting of a canal or canals, and the same not regularly paid to the persons appointed to receive the same, the company are hereby authorised to commence suit or suits for the sum or sums so subscribed, and recover the same in any jurisdiction having cognizance thereof.

Company may prosecute delinquent subscribers.

5. *And be it further enacted*, That the said company may sue and be sued, plead and be impleaded, under the denomination of the Canal Company.

May sue and be sued, &c.

CHAP. 433.

An act to amend the laws heretofore passed concerning court-houses (See 1741, c. 33, and prisons, and to provide for the safe keeping and humane treatment of persons in confinement. s. 1.)

1. *Be it enacted, &c.* That there shall be kept and maintained in good and sufficient repair, in each and every county in this state, a court-house and common gaol; the whole expense of building whereof when there

Each county to have a court-house and gaol.

Courts empowered to lay taxes for the purpose, &c.

(Further power—see 1816, c. 911, s. 1.)

Treasurer of public buildings to be appointed.

His duty, &c.

(Amended; see 1797, c. 488, s. 1, 2, 3.)

Tenure of his office.

Compensation.

Commissioners to be appointed.

shall be occasion, as well as repairing such as are already built, shall be defrayed by the county wherein the same are situated: and the courts of the several counties respectively, are hereby invested with full power and authority, to lay and collect taxes from year to year as long as may be necessary, for the purpose of building, repairing and furnishing their several court-houses and gaols in such manner as they shall think proper; and from time to time to order and establish such rules and regulations for the preservation of the court-houses, and for the government and management of the prisons, as may be conducive to the interest of the public, and the security and comfort of the persons confined.

2. *Be it further enacted*, That the several county courts shall appoint, as soon after the passing of this act as may be convenient, a suitable person residing within the county, to act as treasurer of the public buildings; whose duty it shall be (after having given bond and satisfactory security in the name of the chairman of the court, in such sum as may be required, for the faithful discharge of the trust reposed in him) to superintend the public buildings, and from time to time report the state and condition thereof; to recommend alterations, repairs or improvements, together with the sums requisite for carrying such alterations, repairs or improvements into effect; to call to account and settle with all former commissioners who may have received county or district monies for such purposes; to hear the complaints of persons confined respecting their diet and treatment; to examine into the conduct and character of the jailor, and make information thereof to the court or grand jury of the county or district, as circumstances may require; to apply for and obtain from the clerk, all papers and documents properly attested, which may be necessary for the collection of the taxes laid by the court; to see that the same be collected, accounted for and applied according to the intentions and provisions of this act. And the treasurer so appointed and qualified, shall hold his office during good behaviour; and as a compensation for all his services, shall be entitled to retain a sum not exceeding five per cent. of the monies which may pass through his hands.

3. *Be it further enacted*, That when the treasurer of the public buildings of any county, shall in his report

to the court of such county, recommend alterations, repairs or improvements to the court-house or gaol, and the court being satisfied of the utility thereof, it shall be lawful for such court, after having previously estimated the expense, to appoint one or more commissioners, in conjunction with their treasurer, to contract for carrying the same into effect, but such contract being concluded the powers of the commissioners shall cease; and the monies payable thereon shall be advanced from time to time by the treasurer, who is hereby declared to be solely responsible and accountable to the court, as well for the sufficiency of the work as the disbursements of the money. And the treasurer shall at least once in every year, and oftener if thereto required by the court, exhibit a fair account of his receipts and expenditures, setting forth the monies received, and at what time; the sums expended, to whom, for what use, and at what time: A complete transcript of which account shall be posted up in the court-house for public inspection; and if the treasurer shall fail, refuse or neglect to exhibit the same, he shall be liable to be sued upon his bond, and also to such fine, in addition thereto, as the court may think proper to impose, not exceeding fifty pounds. *Provided nevertheless,* In the appointments of the treasurer and commissioners directed by this act, there shall be present a majority of the acting justices in the counties respectively.

4. *And be it further enacted,* That after the expiration of three years from the passing of this act, there shall be provided within each of the district gaols of this state, at least four comfortable and secure apartments; which shall be designated, by inscriptions over the door of each, to the following purport, CRIMINAL'S ROOM, DEBTOR'S ROOM, FEMALE PRISONER'S ROOM, NEGROES' ROOM: And all white male persons charged with offences against the state shall be committed to the first, white male debtors to the second, white female prisoners of every description to the third, and negroes of every description to the fourth. And when the treasurer of the public buildings shall have reported to the court of the district and county wherein the gaol is situated, that the several apartments aforesaid are adequate to the secure confinement of such persons as may be committed thereto, it shall be the duty of the jailor to confine those committed to his custody, in the apart-

Their duty in conjunction with the treasurer.

Treasurer's duty respecting his accounts.

Penalty for neglect.

A majority of justices in appointment of treasurer and commissioners.

In three years district gaols to be provided with four apartments.

Their designation, &c.

Jailor to confine all prisoners according to their description.

ments provided and designated for persons of the description of which the prisoner may be; and in case a jailer shall wantonly or unnecessarily confine prisoners committed to his keeping, otherwise than by this act is directed, it shall be a misdemeanor in office, and upon conviction, he shall be fined at the discretion of the court trying the same.

Penalty for acting contrary.

County gaols to have 3 apartments.

Privileges allowed the prisoners.

(See 1816, c. 911.)

Penalty on jailer or injuring his prisoners.

5. *Be it further enacted*, That the gaols of the several counties in this state shall be provided with at least three separate comfortable apartments; one for the confinement of debtors, one for the confinement of criminals, and one other for the confinement of negroes.

6. *Be it further enacted*, That all prisoners committed to any gaol in this state shall be permitted to purchase and send for such necessaries, in addition to the diet furnished by the jailer, as they may think proper; and to provide their own bedding, linen and clothing, without their being obliged to pay any perquisite to the jailer for such indulgence: And if the keeper of a public gaol shall do or cause to be done any wrong or injury to the prisoners committed to his custody, contrary to the intentions of this act, he shall not only pay treble damages to the person injured, but such fine, not exceeding twenty pounds for each offence, in addition thereto, as the court of the county where the prisoner is confined, shall think fit to impose.

Prisoners confined for criminal offences to pay all expenses of their support, &c.

7. *Be it further enacted*, That all and every person or persons who shall be hereafter committed to a public gaol by lawful authority, for any criminal offence or misdemeanor against this state, shall bear all reasonable charges for carrying and guarding them to the said gaol, and also for their support therein until lawfully released: And all the estate which such persons possessed at the time of committing the offence, shall be subject to the payment of the aforesaid charges, and other prison fees, in preference to all other debts or demands: And in case there be no visible estate whereon to levy such fees and charges, the amount shall be paid out of the state treasury, (a) upon the best evidence which the nature of the case will admit of, and according to such uniform rules as shall be established by the treasurer and comptroller for that purpose. (b)

If Insolvent to be paid from the treasury, &c. (a Paid by the counties. See 1809, c. 769, s. 1, 2, 3.) (b See 1797, c. 484.)

Duty of sheriff, &c. when apprehensive of prisoners escaping.

8. *Be it further enacted*, That whenever the sheriff of the county wherein any district gaol is situated, or the person keeping such gaol, shall be apprehensive that there

is danger of the prisoners escaping, either through the insufficiency of the gaol or other cause, it shall be his duty, without delay to make information thereof to a judge of the superior court, the attorney-general or solicitor-general, if either of those officers be in the county, and if not in the county, to three justices of the peace, who are hereby authorised, upon consideration of the circumstances and information received, if they deem it advisable, to furnish the said sheriff or keeper of the gaol, with an order in writing, addressed to the commanding officer of the county, setting forth the danger, and requiring him forthwith to furnish such guard as may appear to be suitable for the occasion: For which service the persons ordered out shall receive the same compensation that is or may hereafter be provided by law for the militia when called into the actual service for the defence of the state; and on an application at the treasury for the same, the letter to the commanding officer, on which the guard was ordered out, the certificate of such commanding officer, countersigned by the sheriff or jailer, together with the deposition of the officer of the guard, setting forth the time of service, and that it was faithfully performed, shall be sufficient to authorise the treasurer to pay the same^(a); for which he shall be allowed in the settlement of his accounts.

Guard may be ordered if deemed necessary.

Their compensation and

Manner of obtaining it, &c.

(a Made a county charge, see 1809, c. 769, and 1816, c. 911, s. 4.)

And whereas gaols are sometimes destroyed by fire or otherwise, and it has been doubted whether the county courts or justices have a right to commit persons guilty of small offences or misdemeanors, to the district goal:

9. *Be it enacted*, That when there is no gaol in any county, it shall be as lawful for a justice of the peace or county court to commit the offender to the district gaol, as it would be for him or them to commit such offender to the county gaol; and the district jailer is hereby required to pay due respect to the commitment.

Offenders may be committed to the district gaol when there is no county gaol, &c.

10. *Be it further enacted*, That all laws and parts of laws which come within the purview and meaning of this act, be and the same are hereby repealed and made void.

Repealing clause.

CHAP. 434.

An act to direct the manner of proceeding upon impeachments.

Mode of proceeding by the General Assembly against any public officer impeached, &c.

1. *Be it enacted, &c.* That when any article or articles containing criminal or impeachable matter, shall be exhibited to the General Assembly against a public officer, a notice, signed by the speakers of both houses, shall issue to the person accused, requiring him to appear within fifteen days, at the place where the legislature may be in session; and upon his so appearing, it shall be the duty of the clerk of the house wherein the articles of impeachment were first introduced, to furnish him, upon application, an attested copy of the articles exhibited, together with copies of all documents, depositions or papers in the possession of the house, which the person accused may deem necessary to his defence or exculpation; and he shall also be allowed to make, in a writing addressed to the General Assembly, such answer to the articles exhibited, and such vindication of his official conduct, as he may think pertinent or material: Whereupon it shall be lawful to proceed in the consideration of the articles, and if it shall appear to a majority of both houses, that the person charged hath been guilty of criminal or impeachable conduct, he shall thenceforth stand suspended from the exercise of his official duties, and shall immediately enter into bond, payable to the person who shall be in the exercise of the executive branch of the government, in such sum, and with such sureties, as the legislature at the time may think proper to prescribe, due regard being had to the nature of the offence, and circumstances of the offender, for the purpose of enforcing his appearance at the court before which he is to be tried, as hereinafter mentioned; or he may be committed to prison until he shall find sufficient bail, or stand committed without bail, as the two houses in their discretion may direct: But in case the person accused shall fail, or refuse to appear upon the notice, and within the time aforesaid, before the General Assembly, it shall be lawful to proceed to the consideration of the articles, and if admitted by a majority of each house, the speakers shall without delay issue a warrant to apprehend him; which warrant shall be in the following form, to wit, To the sheriff of the county of _____ and to all and singular the sheriffs, coroners, and other ju-

Form of a warrant for apprehending any officer impeach-

ditional and ministerial officers of this state: Whereas articles of impeachment have been exhibited and admitted in the present General Assembly, against for certain high crimes and misdemeanors against the state; and whereas the said hath failed upon notice given to appear and abide the order of the General Assembly: You the said sheriff of the county of and all and singular the sheriffs, coroners, and other judicial and ministerial officers of each and every county within this state, are therefore commanded to take the body of the said if to be found within your respective counties, and bring him before the court of for the district of on the day of to be dealt with according to law; and for your or either of your so doing, this shall be a sufficient warrant. Given under our hands and seals, &c.

ed, who fails to appear according to notice.

2. *Be it further enacted*, That the court for the trial of impeachments, shall be held by the judges of the superior courts of law for the time being, at the courthouse of the district wherein the offence is charged to have been committed, at the terms fixed by law for the sessions of such court, except when any of the judges of the courts of law or equity, the attorney-general, or solicitor-general, may be the person impeached; in which case the legislature shall elect by joint ballot of both houses, at least three persons, properly qualified, who shall be styled judges of the court of impeachments, to be commissioned by the governor for that special occasion, and whose power and duty shall continue until final judgment of conviction or acquittal of the person or persons impeached, according to the verdict of a jury of good and lawful men as in other criminal prosecutions, shall have been pronounced or carried into effect, and no longer.

Court of impeachment by whom held, where, and at what time.
Exceptions.

3. *Be it further enacted*, That whenever an impeachment is admitted, it shall be the duty of the speakers of the two houses to transmit copies of the articles admitted, together with every paper or document which may be deemed by the two houses or the person impeached, material in the case, to the clerk of the court of the district wherein the cause is directed to be tried; who shall receive and preserve the same as records in his office; and if the offender be not apprehended, it shall be the duty of such clerk, to issue the same process, and to use the same means, to enforce his personal ap-

Speakers to forward all the papers to the clerk where the impeachment is to be tried, who is to preserve them.

Clerk's duty in enforcing the offender's appearance.

Governor's duty where he escapes from the state, &c.

Managers to be appointed to assist the attorney and solicitor-general.

Compensation, &c.

When a judge or the attorney or solicitor-general is impeached, the clerk of the superior court shall attend the court of impeachment.

His fees, &c.

Compensation to the judges of the court of impeachment.

pearance before the said court, as would have been legal and requisite, if the prosecution had been founded on the presentment or indictment of a grand jury: And if the person impeached shall have escaped from the state before his arrest, or being arrested, shall break custody and take refuge in another state, it shall be the duty of the person exercising the duties of governor for the time being, to take and use all lawful and reasonable means, to cause the said offender to be reclaimed, so that the intentions of this act, and the purposes of justice, may not be evaded.

4. *Be it further enacted*, That it shall and may be lawful, in every case where an impeachment is admitted against any officer whatever, for the General Assembly admitting such impeachment, to appoint by joint ballot of both houses, such number of managers on the part of the state, to assist the attorney-general and solicitor-general, as may appear to be necessary; and the said managers shall not only be entitled to adequate compensation for their own services, but when the attorney-general or solicitor-general may be the person impeached, they shall be and are hereby authorised to employ counsel for and at the expense of the state.

5. *Be it further enacted*, That when a judge of any of the courts of law or equity, or the attorney-general or solicitor-general shall be impeached, and the General Assembly shall appoint judges of the court of impeachment as aforesaid, it shall be lawful for them, and they are hereby authorised to require the clerk of the superior court of law for the district in which the offender is to be tried, to attend at the time and place which shall have been prescribed by the General Assembly for the trial of such impeachment: And it shall be the duty of the said clerk to attend from day to day, and act as clerk of the court of impeachment; for which he shall be entitled to the same fees that are lawful in other criminal prosecutions, to be taxed by the court, and levied by execution in the usual manner, upon the property of the person impeached; and also such further sum for extra services, to be paid by the public, as the court may think reasonable. And the judges of the court of impeachment respectively, shall be entitled to receive in full compensation for all services rendered by them, the sum of five pounds per day, during the time they may be obliged to remain at the place appointed

for trial, together with the sum of twenty-five shillings for every thirty miles travelling to and from the said place ; which sums shall be paid by the treasurer upon the warrant of the governor as in other cases.

6. *Be it further enacted*, That it shall be lawful for the judges of the court of impeachment, and they are hereby authorised to require the attendance of the sheriff of the county wherein the court may be holden, and such number of constables as may appear to them to be necessary, during the course of the trial ; and previous to the meeting of the said court, the judges are also hereby authorised and required to issue writs, or cause them to be issued by the clerk, to the sheriffs of the several counties composing the district(a) in which the offender is to be tried, directing them to convene a majority of the acting justices of the peace of their respective counties, on a day or days to be appointed by the judges, for the purpose of making out lists of jurors, whose qualifications and characters shall be above all exceptions, and whose numbers shall be the same that are usually returned to the superior court of law from each of the counties respectively. And upon the said justices making out and delivering to the sheriffs within each county a list of jurors as aforesaid, it shall be the duty of the several sheriffs forthwith to summon them to appear at the time and place appointed for the trial of the impeachment ; for which service they shall obtain certificates from the clerk, to be paid in the same manner that other jurors are paid for attendance : they shall take the same oaths that are usually administered in criminal prosecutions, and for non-attendance, negligence or misbehaviour, be subject to the same penalties and forfeitures.

7. *Be it further enacted*, That all process respecting any impeachment, shall be returnable to the court in which such impeachment is to be tried ; and when offences are charged to have been committed in more districts than one, it shall be lawful for the General Assembly to direct in which of the said districts the trial shall be had ; and all necessary process previous or subsequent to the trial, shall issue and be returned accordingly. And it shall be the duty of the clerk of the superior court of law, wherein any trial of impeachment is directed or had, to preserve the proceedings of the court of impeachment in his office, as records which may be

Their power in requiring the attendance of sheriff, &c. of the county, and in issuing process to the justices to obtain jurors, &c.

(a See county superior courts, 1806, c. 693, s. 1.)

Process in case of impeachment where returnable, &c.

Clerk's duty thereupon.

resorted to as such, and shall forever after be entitled to all the credit and authenticity, which are by law usually given to the attested proceedings of any other court of original jurisdiction in this state.

Salary of persons impeached withheld until the final result of the trial, &c.

Party removed from office on conviction, &c.

8. *Be it further enacted*, That from the time of the admission of the impeachment by the General Assembly, the salary of the person impeached shall be withheld, until the final result of the trial be made known to the treasurer; whereupon if he be acquitted, the salary shall be paid without deduction, in the same manner as if no such suspension had taken place; but in case the person impeached be convicted, all arrears of salary shall not only be considered as forfeited, but the offender shall be removed from office, and shall be thereby, and thenceforward, rendered incapable in law, to hold or accept any office of profit or trust under the authority of this state, for such number of years as the court trying the impeachment shall think proper to adjudge, and moreover be further liable to suffer such other pains and penalties, as the judgment of the court shall inflict.

CHAP. 435.

(See 1784, c. 204—1784, c. 225—1801, c. 575—and 1808, c. 739.)

An act to amend an act passed at Hillsborough, in the year of our Lord one thousand seven hundred and eighty-four, entitled, "An act to regulate the descent of real estates, to do away entails, to make provision for widows, and to prevent frauds in the execution of last wills and testaments."

Whereas by the before recited act, the inheritance of land, and other real estate in fee simple, descends to the males, in exclusion of the females, contrary to the policy of our government:

Females entitled to inherit land by descent equally with males.

1. *Be it enacted, &c.* That from and after the passing of this act, all females shall be entitled to take by descent, equally with the males, share and share alike, according to the rules of descent upon males in the before recited act; any law, usage or custom to the contrary notwithstanding.

CHAP. 436.

An act encouraging the draining of low lands.

1. *Be it enacted, &c.* That from and after the passing of this act, any person or persons owning pocomoset or flat lands within this state, and being desirous to drain the same, but is prevented by the proprietor or proprietors of lands adjoining him or them, it shall and may be lawful for such person or persons, who are desirous to drain their said pocomoset or flat lands, to prefer a petition to the court of the county wherein the said lands are situated, setting forth the particular circumstances of his or her case, situation of their lands, and to what stream or water-course he or she would wish to drain the same: Whereupon the court shall appoint twelve freeholders in the said county, not attached to either party by consanguinity or affinity, who shall go upon the premises, and examine the ground so petitioned to be drained, and that through which said canal or ditch shall pass, as also whether such canal or ditch shall appear necessary; and further, they shall direct the ditch to be cut in such manner and extent, as in their opinion will effectually secure the lands through which it passes, as well as that where it terminates, from inundation; and the jury aforesaid shall upon oath value and assess what damage the proprietor or proprietors of the land where such drain is to be cut shall sustain; and where the same shall appear necessary, the damages shall be paid before the petitioner or petitioners proceed to cut a ditch or ditches through or into such proprietor or proprietors' lands: and when the petitioner or petitioners aforesaid, shall have so paid to the proprietor or proprietors of such lands as aforesaid, the damages or injury the jury might judge he or they sustained, he or they, their heirs or assigns, so paying, shall thereafter be vested with a good and sufficient title in fee for the lands so petitioned for.

Mode of proceeding to be observed by persons desirous of draining their lands, &c.

Court to appoint 12 jurors.

Their duty, &c.

On payment of damages title of land vests.

2. *And be it further enacted,* That in all cases where a jury is appointed for the purposes aforesaid, it shall be their duty to make a fair return of the whole of their proceedings to the next succeeding county court, which shall be recorded in the said courts respectively; and each of the jury appointed as aforesaid, shall be entitled to the sum of eight shillings for each day that they may

Jury to make a return of their proceedings to court, &c.

Their compensation.

Provisoos.

necessarily be employed in laying off said ground; which sums shall be paid to each jurymen by the petitioner or petitioners. *Provided nevertheless,* That nothing in this act shall be construed so as to affect any person or persons' cleared land or houses, unless by and with the consent of the proprietor or proprietors of said land. *And provided also,* That no such drain or ditch shall be cut so as to injure any pond or ponds belonging to any mill or mills which now are or hereafter may be established by law, or to prevent the proprietor or proprietors through whose lands the said ditch or canal may pass, from putting a fence or bridge across the same, provided such fence or bridge shall not obstruct the free passage of the water down said canal or ditch.

CHAP. 437.

An act granting further time for proving and registering bills of sale and deeds of gift.

Time allowed for registering bills of sale and deeds of gift. Their validity.

(See 1791, c. 348—and 1802, c. 622.)

1. *Be it enacted, &c.* That all bills of sale taken, and deeds of gift made, and not already recorded, in manner required by law, shall have a further time of twelve months allowed for probate and for registration; and shall when thus authenticated and perpetuated, be held and deemed as valid, to all intents and purposes, as if they had been proved and registered within the time required by an act passed at Fayetteville, in the year one thousand seven hundred and eighty-nine; any law, usage or custom to the contrary notwithstanding.

CHAP. 438.

An act giving a further time for the registration of certain deeds issued from Lord Granville's office.

Time allowed for registering certain deeds from lord Granville's office. (a See 1790, c. 328—and 1800, c. 553.) Provisoos.

1. *Be it enacted, &c.* That all deeds issued from the office of the late Earl of Granville, and not already registered, may have a further time of two years(a) allowed for registration; and the proof necessary there-to shall be by parity of hands: *Provided,* the person so offering the said grant to probate, shall first make oath that better proof of the execution of the said grant

or grants cannot be by him procured : *Provided also*, That the lands held under such deeds shall have been actually occupied by the original grantee, or some person under him, for the space of seven years, and taxes paid thereon for the said time. And all deeds under the description and condition aforesaid, proved and registered, shall be good and valid in law, and shall enure and take effect as fully and effectually, to the use and behoof of the grantees, their heirs and assigns, and those claiming under them, as if such deeds had been proved and registered agreeable to the directions of any act of Assembly heretofore made.

CHAP. 439.

An act to amend an act, entitled, "An act to prevent the inhabitants of South-Carolina driving their stocks of cattle from thence to range and feed in this province, and other purposes," passed in the year one thousand seven hundred and sixty-six. (See 1766, c. 81.)

Whereas the above mentioned act permits any person to drive cattle into this state, or through any part thereof, provided such person shall produce when called for a certificate specifying that such cattle were free from distemper or infection, and that no distemper or infection was known to be among cattle at the time of removal or purchase of said cattle, within five miles of the place whence they came ; and it is found by experience that such certificate is insufficient : For remedy whereof,

1. *Be it enacted, &c.* That no person whatever shall hereafter drive any cattle into this state between the first day of April and the first day of November in every year, from either of the states of South-Carolina or Georgia, under the penalty of forty shillings for each and every head of cattle brought into this state contrary to the meaning of this act, to be recovered by any jurisdiction having cognizance thereof, by any person suing for the same, one-half to his own use, and the other half to the use of the state.

Penalty on persons driving cattle into this state from S. Carolina or Georgia at certain seasons.

2. *Be it further enacted*, That no person shall hereafter drive any cattle from those parts of this state where the soil is sandy, and the natural productions or growth of timber is the long-leaved pine, into or through any of the high land parts of the state, where the soil

Or from certain parts of this state into the high land parts thereof.

Or the contrary.

Persons driving cattle through the state to have a certificate of the place from whence driven, and of their sound state at the time.

Justice not to give certificate without affidavit.

or growth of timber is of a different kind, between the first day of April and the first day of November in every year, under the penalty of forty shillings for each and every head of cattle so driven, to be recovered and applied as before mentioned; nor shall any person hereafter within the said time drive any cattle from the highland parts of this state, into those parts where the long-leaved pine is the natural growth and production, under the like penalties, to be recovered and applied as aforesaid.

3. *And be it further enacted,* That no person or persons shall hereafter drive any cattle from any part of this state through any other part thereof, without first obtaining or carrying with him or them a certificate or certificates, under the hands and seals of two justices of the peace of the county where such cattle were severally and respectively purchased or collected from range, accompanied with an affidavit or affidavits of the owner or owners of said cattle, setting forth the place or places where said cattle were purchased, or had ranged as aforesaid, and describing therein the nature of the soil and growth of timber on such place or places, and also that said cattle were at the time of purchase or removal sound and free from any infectious distemper. And if any justice shall grant such certificate, without an affidavit of the owner or owners as aforesaid, it shall be deemed a misdemeanor in office.

CHAP. 440.

An act to alter the time of the annual meeting of the General Assembly.

Time of meeting in future.

1. *Be it enacted, &c.* That the meeting of the next General Assembly of this state shall be on the third Monday of November, in the year one thousand seven hundred and ninety-six, and on the third Monday of November in each and every year thereafter: any thing to the contrary notwithstanding.

CHAP. 441.

An act to amend the third section of an act, entitled "An act for levying a tax for defraying the contingencies of the several counties in this state, and other purposes," passed in the year one thousand seven hundred and seventy-seven. (See 1777, c. 129.)

1. *Be it enacted, &c.* That in addition to the duties therein prescribed for the county trustee in the said third section, it shall, from and after the passing of this act, be the duty of the trustee in each county within this state, and they are hereby required, to collect from those who have or may enter strays in their counties respectively, all sums that are or may be due for any stray or strays entered, under the same rules as they are to collect any other monies to them to be paid: (a) and on all such collections they shall be entitled to retain six per centum. And if any person who has or may enter strays shall fail to account for the monies aforesaid, it shall be the duty of the county trustee to commence suit for the same. (b)

Duty of county trustee in collecting monies from those who enter strays.

(a See 1798, c. 497, s. 1, 2.)
His commissions.
To sue those who fail to account.
(b See 1808, c. 754.)

CHAP. 442.

An act to amend an act, entitled "An act for appointing an additional judge of the superior court of the district of Morgan, and for the relief of persons who have or may hereafter forfeit their recognizances in the superior and county courts," passed at Fayetteville, in the year one thousand seven hundred and eighty-eight. (See 1788, c. 292.)

Whereas the above recited act gives power to the judges of the superior courts to mitigate or absolutely remit forfeited recognizances; but said act does not point out in what manner the money is to be repaid to the person, after execution is levied and the money collected: For remedy whereof,

1. *Be it enacted, &c.* That it shall be the duty of the clerks of the several superior courts in this state, on the remission of any forfeited recognizance, on which execution hath been awarded, and the money collected and returned by the sheriff to the clerk's office, to refund and pay back to the person out of whose estate the said execution was satisfied the full amount of the money so collected, or so much thereof as shall be remitted by the judges agreeable to the before recited act.

On remission of a forfeited recognizance, clerk to refund the money where it has been collected into his office.

If paid into the treasury, treasurer's duty thereupon, &c.

(a See 1801, c. 587.)

2. *And be it further enacted*, That in case the clerk has paid the same into the treasury, that then and in that case it shall be the duty of the treasurer, and he is hereby required, to pay and refund to the person from whom it has been levied and collected, the amount thereof, (a) on their producing an attested copy of the record from the clerk of the court, certifying that such recognizance hath been remitted or mitigated, the time of forfeiture, the sum for which the execution was awarded, and the precise sum by them remitted, signed with his own proper name, with the seal of the court affixed thereto; which certificate shall be a sufficient voucher for the treasurer for the amount expressed in said certificate; any law, usage or custom to the contrary notwithstanding.

CHAP. 443.

(See guardian bonds, 1762, c. 69, s. 7.)

An act to exonerate the securities of guardian bonds after a limited time.

Whereas by law there is no given time for orphans to settle with their guardians, by which means great injury arises to the securities of guardians:

Time when securities of guardians may be exonerated.

1. *Be it enacted, &c.* That from and after the passing of this act, any orphan coming to the age of twenty-one years, if he or she does not call on his or her guardian within three years from thence for a full settlement of his guardianship, the securities of such guardian shall be discharged from their securityship, in as full and ample a manner as if such security had not been bound.

Proviso.

Provided, That nothing in this act shall extend to persons imprisoned, beyond seas, or non compos mentis.

CHAP. 444.

(See act of Congress, 20th April, 1818, c. 86.)

An act to prevent any person who may emigrate from any of the West India or Bahama islands, or the French, Dutch or Spanish settlements on the southern coast of America, from bringing slaves into this state, and also for imposing certain restrictions on free persons of colour who may hereafter come into this state.

Penalty on persons coming

1. *Be it enacted, &c.* That from and after the first day of April next, it shall not be lawful for any person

coming into this state, with an intent to settle or otherwise, from any of the West India or Bahama islands, or the settlements on the southern coast of America, to land any negro or negroes, or people of colour, over the age of fifteen years, under the penalty of one hundred pounds for each and every such slave or persons of colour, to be recovered before any jurisdiction having cognizance of the same, one-fifth to the use of the informer, and the other four-fifths to the use of the state.

2. *And be it further enacted,* That it shall be the duty of such person or persons bringing in any such negro or negroes, or people of colour, under the age of fifteen years, to prove the age of the same by his own oath, or the oath of some other person, before some justice of the peace, if the same be required.

3. *And be it further enacted,* That if any free person of colour shall come into this state, by land or water, or any slave shall hereafter be emancipated, (a) he, she or they shall be compelled to give bond and security to the sheriff, payable to the governor for the use of the state, in the sum of two hundred pounds, for his, her or their good behaviour, during the time he, she or they may remain in this state; and it is hereby declared to be the duty of the sheriff to apply to the above described persons, and take from them a bond as aforesaid; and if any person so applied to should refuse to give such bond, the sheriff of the county where the person so applied to for the time being resides, shall be and is hereby authorised and directed, to take him, her or them into custody, and confine them and every of them in the gaol of the county, until the ensuing court, when it shall be the duty of said court to empanel a jury to enquire whether the person so confined comes within the meaning and purview of this act; and if the said jury shall find that such person does come within the meaning of this act, then and in that case the court shall compel such person to give bond as aforesaid for his, her or their good behaviour, and upon failing so to do, the court shall order such person to be sold, for the benefit of the state, at public auction.

4. *And be it further enacted,* That it shall be the duty of the several county courts in the state, to charge the grand juries of the respective counties to make presentment of all such free persons of colour as conduct themselves so as to become dangerous to the peace and

from the West Indies, &c. to settle in this state landing therein any slave over the age of 15 years;

The age of those brought in under 15 to be sworn to if required.

Free persons of colour coming into the state & slaves emancipated to give security for their good behaviour.

(a See 1788, c. 289, and the acts there referred to.)

Sheriff to apply to them for that purpose.

How to be proceeded against, and what liable to, when failing to give bond, &c.

Duty of the county courts when such persons behave disorderly, &c.

good order of the state and county, upon which said presentment, it shall be the duty of the court to whom the same is made, to issue an order to the sheriff to take into custody the person so presented, and him safely keep until the next county court, when a jury shall be empannelled, as before directed in this act, and a trial agreeably thereto had; and if any person shall be found guilty on such trial, he shall be compelled to give bond and security, as in cases of persons coming into this state contrary to this act; and in case of failure of the person so found guilty to give bond, he, she or they shall be sold for the use and in the manner aforementioned.

Militia to be called out when alarming depredations are committed, &c.

(a See 1802, c. 618, s. 7, 8.)

Regulations, pay and rations.

Provision when invalid.

Proviso.

5. *And be it further enacted*, That when any number of negroes, or other slaves, or free people of colour, shall collect together in arms, and be going about the country, committing thefts, and alarming the inhabitants of any county, it shall be the duty of the commanding officer of such county, or captain of a troop of horse, upon three or more justices of the peace requiring the same, (a) immediately to call out a sufficient number to suppress such depredations or insurrections; which detachment of militia shall be under the same rules and regulations, as in cases of invasion and insurrection, and shall be entitled to receive the same pay and rations as the troops of the United States, when in actual service; and if any person shall be wounded or disabled in suppressing such insurrection, he shall be provided for at the public expense, in the same manner as heretofore practised in this state. *Provided nevertheless*, That if the officer above mentioned shall fail or neglect to order out a detachment of the militia in the above directed cases, his superior officer may, upon sufficient proof being made of the necessity of such a measure, order him or any other officer under his command, to suppress such depredation or insurrection, and if the person so ordered shall fail to obey the same, they shall suffer as in cases of insurrection or invasion.

CHAP. 445.

An act to amend an act, entitled, "An act to prevent the issuing of grants for lands entered with any of the entry-takers in this state, in certain cases;" and to prevent the issuing warrants of survey in manner as is described. (Sec 1794, c. 417.)

1. *Be it enacted, &c.* That all entries for lands made with any of the entry-takers under the second section of the before recited act, and for which the purchase money hath not been paid to the treasurer, shall become and they are hereby declared to be null and void; and such lands shall revert to the state, and shall be free to be entered again in the same manner as if entries therefor had never been made, notwithstanding warrants may have been issued, and surveys thereof had, unless the purchase money for the same shall be *bona fide* paid by the enterers, their agents or assigns, into the public treasury, within six months from the end of the present session of the General Assembly.

Certain entries of land declared void.

(Obsolete.)

And reverted to the state, &c.

2. *And be it further enacted,* That in all cases of failure under this act, the person or persons wishing to ascertain the same, and to make entry of the land so forfeited, and which shall revert to the state as aforesaid, shall make application at the treasury office, and having obtained from the treasurer a certificate, that the first enterer or enterers have neither by him or themselves, nor by his or their agent, paid for any part of the lands by him or them said to have been entered, or that having paid in part, he or they had not paid for certain numbers; in either of these cases, the person or persons obtaining such certificate, and filing the same with the entry-taker of the county in which the lands lie, shall be permitted to enter the same lands, or such parts thereof as are so certified as aforesaid, as not having been paid for; and shall thereupon have as full and complete title to the same, on his complying with the requisites of this act, as he or they would have had in case such lands had not been previously entered under the above recited act of February, one thousand seven hundred and ninety-five.

How to be entered by other persons, &c.

3. *And be it further enacted,* That for all entries of lands which may hereafter be made with any of the entry-takers in this state, the purchase money shall be paid to the public treasurer within six months from the date of the entry, if for a greater quantity than three

Entries where the purchase money is delayed, declared void, &c.

(Obsolete.)

hundred acres ; and for any quantity under that, twelve months ; otherwise such entries shall be, and they are hereby declared to be, void and of none effect ; and the lands so entered, which shall not be paid for within the time aforesaid, shall revert to the state, and shall be considered vacant and liable to be entered and secured by any person or persons complying with the requisites of this law ; any previous issuing of warrants for and making of surveys of the same notwithstanding.

Duty of entry-takers in issuing warrants for entries.

4. *And be it further enacted*, That it shall be the duty of the several entry-takers immediately after the passing of this act, to issue warrants on the application of such persons who have made entries for lands in their offices since the eighth day of February last, in the same manner and under the same rules, as was heretofore prescribed by law ; and on all entries which may hereafter be made, to issue warrants of survey, at the expiration of three months from the date of each entry. *Provided*, Nothing herein contained shall authorise the issuing warrants of survey in cases of caveats, in any manner other than that heretofore pointed out by law.

Proviso as to caveats.

Payments to the state not to be postponed, &c.

(See 1796, c. 455, s. 8—and 1798, c. 493, s. 4.)

5. *And be it further enacted*, That the time of payment to the state, shall in no wise be postponed by means of entering caveats, or through other frauds or collusion ; but in all cases of entry, the cash or certificates shall be paid into the treasury within the time above limited ; and the party ultimately failing to obtain the lands paid for, shall have his cash or certificates refunded to him in manner as is already provided by law.

And whereas it is represented that sundry persons heretofore or at present entry-takers, have, in order to evade the act of Assembly, passed in February, one thousand seven hundred and ninety-five, as above recited, fraudulently issued warrants on entries, by them pretended to have been made at some time previous to the first day of January, one thousand seven hundred and ninety-four, although no return of such entries hath ever been made to the comptroller, and although no part of the purchase money therefor hath at any time been paid to the state, greatly to the injury of the public revenue, and contrary to their known duty :

6. *Be it therefore enacted*, That from and after the passing of this act, it shall not be lawful for the secretary of state to make out or issue a grant, on the return

Duty of the secretary in issuing grants, &c.

of any land warrant issued on an entry made previous to the eighth day of February, one thousand seven hundred and ninety-five, (military warrants excepted,) until the person who entered the land, or some person for him, shall make oath that the purchase money to the state hath been actually paid agreeably to law ;^(a) and that the warrant on which the grant is claimed, was fairly and justly obtained, and without fraud ; unless it shall appear by the return of the entry-taker, and lodged in the comptroller's office previous to the eighth day of February, one thousand seven hundred and ninety-five, that the land for which the grant is claimed, was properly entered and returned by the entry-taker of the county ; in which case the certificate of the comptroller shall be a sufficient voucher for the secretary to issue the grant on. *Provided*, That any person living at a distance from the seat of government, and being about to apply for a grant for lands in virtue of an entry made previous to the eighth day of February, one thousand seven hundred and ninety-five, may (if he chooses,) instead of making affidavit in presence of the secretary of state, present the entry-taker's receipt for the purchase money to the court of his county, and having made affidavit in open court,^(b) and procured the receipt to be attested by the clerk, and that together with the affidavit to be sealed with the county seal, and directed to the secretary of state, forward the same to his office by any conveyance ; and the receipt and affidavit so made, attested and sealed up as aforesaid, shall be a sufficient voucher for the secretary to issue the grant on.

(a See 1796, c. 455, s. 2.)

(b This proviso partly repealed, see 1798, c. 493, s. 1.)

7. *And be it further enacted*, That it shall not be lawful for any person who now is, or heretofore hath been, or hereafter shall be, entry-taker in any county in this state, to issue a warrant or warrants on any entry made or pretended to have been made in the books kept by him when entry-taker, after the time he shall cease to be such, on pain of forfeiting the sum of fifty pounds for each and every offence ; to be recovered in any of the superior courts of law in this state by any person suing for the same, and applied one-half to his own use and the other half to the use of the state ; and on pain of being imprisoned at the discretion of the court, not exceeding three months ; but each entry-taker shall deliver up his books to the clerk in open court at the

Penalty on entry-taker issuing warrants on entries after the expiration of their office, &c.

time of his resignation or dismissal, or at the first court which shall happen thereafter, first particularly noting in the margin opposite each entry, all such entries on which warrants have not been issued, to the end his successors may, by written and particular order of the court, issue the same.

Entry-taker to give a certificate to persons entering lands, &c.

(a Sec 1796, c. 455, s. 1.)

County court clerks authorised to receive the books of all entry-takers, &c.

And to deposit them in their offices, &c.

Clerks to make out and transmit transcripts thereof to the secretary.

8. *And be it further enacted*, That it shall be the duty of each and every entry-taker in this state, at the time of making an entry for lands, to furnish to the person making the same, a certificate of the date, number of the entry, and quantity of acres contained in each entry; (a) which certificate shall be lodged with the treasurer by the person obtaining it, at the time when payment shall be offered.

9. *And be it further enacted*, That immediately after the passing of this act, it shall be the duty of the clerks of the several counties in this state, to demand, and they and each of them are hereby authorised to receive from the entry-takers of their respective counties and from those who have heretofore been entry-takers and are now no longer such, and from the heirs, executors and administrators of all persons, who at any time between the month of December, one thousand seven hundred and seventy-seven, and the eighth day of February, one thousand seven hundred and ninety-five, have acted in that capacity, all books which have been by them, or any of them, kept for entries of land; and generally the said clerks respectively shall have power to demand and receive from all persons whatever, in whose possession the same may be, all entry-office books as aforesaid; and the same having received, it shall be the duty of the said clerks to deposit the originals in their respective offices, for the safe-keeping and preservation of which they are hereby declared to be responsible.

10. *And be it further enacted*, That as soon as the clerks shall have obtained possession of the entry-books as aforesaid, it shall be their duty, and they are hereby directed, to make out a fair and complete transcript of the books deposited in their several offices; which transcripts, after having been previously compared with the originals, under the inspection of the court, and properly attested, with the seal of the county annexed, shall be without delay transmitted by the clerk making the same to the secretary's office, on or before

the first day of July next. And it shall also be the duty of the clerks, not only to receive such books as may be delivered to them, and forward a transcript thereof as herein directed, but also to obtain information of the number and names of the several entry-takers, who have acted in their respective counties at any time between the month of December, one thousand seven hundred and seventy-seven, and the eighth day of February, one thousand seven hundred and ninety-five; and particularly state to the secretary, in a report which shall be subjoined to the transcript, the number of books which may be wanting, the names of the entry-takers who originally made and kept the same, the names of their securities, together with the real or suggested causes wherefore such books cannot now be obtained.

To obtain the names of the several entry-takers, &c. and report them to the secretary, with the number of books wanting, &c.

11. *And be it further enacted*, That should it so happen that any entry-taker, or other person in whose possession the same may be, should refuse to deliver the books of his office, or the books of any entry-taker which may be in his possession, custody or keeping, on the application of the clerk of the county, or on his written and witnessed order, the person or persons so failing or refusing, shall forfeit and pay the sum of five hundred pounds, to be recovered by the attorney or solicitor-general, on the complaint of the clerk to whom the books have been refused, and applied to the use of the state. And if any clerk, after having received such books, shall fail, neglect or refuse to make out and transmit the transcripts as above directed, to the secretary of state, such clerk, so offending, shall forfeit and pay the sum of five hundred pounds, to be recovered and applied as other penalties in this act are directed.

Penalty on entry-taker, &c. refusing to deliver up the books.

And on clerk for his neglect.

12. *And be it further enacted*, That it shall not be lawful for any person or persons, to take or hold the books of the said entry-takers in their possession, unless when permitted by this act, or unless the same shall come to his or their hands as executors or administrators. And if any person or persons, not being an entry-taker, shall presume to possess himself or themselves of the entry-taker's books for any county in this state, and shall make any official use of the same, or write therein, or intermeddle therewith in any manner whatsoever, shall forfeit and pay the sum of five hundred pounds, to be recovered and applied as other pe-

No person to hold or intermeddle with the books of an entry-taker, unless entitled by this act, &c. under a penalty,

nalties in this act are directed; and shall on conviction thereof in any court of record, be liable to imprisonment not exceeding six months for each and every offence.

Repealing
clause. *Y 13*

13. *And be it further enacted*, That all laws and clauses of laws heretofore passed, coming within the purview and meaning of this act, be and the same are hereby repealed and made void.

CHAP. 446.

An act directing the manner in which the clerks of the several superior and county courts shall hereafter make their returns to the comptroller.

Clerk's duty in making out his returns of tax fees, fines, &c.

(a See 1803, c. 641.)

And in transmitting them to the comptroller, &c.

(b Clerks to account for tax on

1. *Be it enacted, &c.* That it shall be the express duty of the clerks of the several superior and county courts, to make a return, at the first court which shall happen after the first day of January in each year, of all tax fees and fines, forfeitures and amercements, by them received, on oath; which oath shall be taken and subscribed in open court, (a) if by a clerk of the superior court, before the bench of judges, and if of the county court, before the bench of justices, and shall be signed by all the judges or justices present, as the case may be, and shall contain as well the names of all persons who have paid tax fees, as of all those who have in the preceding year been fined, amerced, or judged to have forfeited their recognizances, and from whom the monies have been collected, either in the whole or in part, stating the precise sum received from each: Which return, when made out, sworn to and subscribed as aforesaid, shall be transmitted to the comptroller, on or before the first day of October, which shall next follow, under the same penalty as is already provided by law, and shall on like penalty be accompanied by a complete list or return of the names of all persons fined, amerced or adjudged to have forfeited their recognizances, during the preceding year, and the particular sums in which they have been fined, amerced or judged to have forfeited, as well those who have paid in full or in part, agreeably to the return above required, as those who have not paid any thing; (b) which list or return shall be made out and presented to the court at the same time

with the return above mentioned, and shall be sworn to and subscribed in like manner, and shall be lodged in the comptroller's office, as a check on the returns which may be thereafter made.

attorney's license. See 1806, c. 698, s. 2.)

2. *And be it further enacted*, That it shall be the duty of the comptroller, and he is hereby required, after the first day of October, in every year, to hire an express and send to every clerk within the state, who fails to make his return agreeably to law; which express shall be entitled to receive six pence per mile for going and returning from such clerk's office, and the expense the clerk shall be charged with; and the treasurer shall enter up judgment against him for the same, as in other cases.

Comptroller to send express to clerks failing herein.

Judgment to be taken against them.

CHAP. 447.

An act to amend an act, entitled, "An act authorising the county courts of pleas and quarter sessions to divide and appropriate the real estate of intestates," passed in the year one thousand seven hundred and eighty-seven. (See 1787, c. 274.)

Whereas the above recited act is deficient, inasmuch as it omits to point out how the commissioners for dividing estates shall be summoned, or who shall administer the oath necessary for them to take: For remedy whereof,

1. *Be it enacted, &c.* That from and after the passing of this act, whenever any court shall, on any petition being filed and commissioners appointed, order the sheriff of the county where the commissioners live to summon said commissioners to appear on the premises, for the purposes which may be set forth in said order, whose duty it shall be to summon the same; and when they or a majority of them shall have met, the sheriff or some justice of the peace shall administer the oath prescribed by the aforesaid act, before they proceed to execute the purposes for which they shall have been appointed.

Sheriff to summon the commissioners.

He or a justice may administer to them the oath.

CHAP. 448.

An act to annex part of the county of New-Hanover to Sampson county.

Part of New-Hanover added to Sampson.

1. *Be it enacted, &c.* That from and after the passing of this act, all that part of New-Hanover county lying west of a line beginning where the Sampson county line crosses Black River, thence down said river to Benjamin Robertson's lower mill-branch, thence a direct course to Stewart's ferry on South River, and thence up the same to the point of beginning in Sampson line aforesaid, be and the same is hereby annexed to the county of Sampson, and shall to all intents and purposes be considered as a part thereof.

[*The remainder unnecessary to be inserted.*]

Read three times and ratified in General Assembly, }
the 9th day of December, Anno Dom. 1795. }

B. SMITH, S. S.

J. LEIGH, S. H. C.

Copy.—J. GLASGOW, Secretary.

Samuel Ashe,
Esq. Governor.

At a General Assembly begun and held at the city of Raleigh, on the twenty-first day of November, in the year of our Lord one thousand seven hundred and ninety-six, and in the twenty-first year of the independence of the said state: Being the first session of the said Assembly:

CHAP. 449.

An act to raise a revenue for the payment of the civil list and contingent charges of government for the year one thousand seven hundred and ninety-seven, and to amend the revenue laws in certain cases.

Lands must be advertised before sold.

(Sheriff shall return list of lands before he sells; and shall return account of sales. See 1819, c. 1006, s. 1 and 2.)

1. *Be it enacted, &c.* That from and after the passing of this act, it shall not be lawful for any of the sheriffs in this state, either by themselves or their deputies, to sell lands for their taxes, until the same hath been first advertised for sale in the North-Carolina Journal, the State Gazette or the Fayetteville Minerva, for the space of one month, and also in the county in which they are situated, in manner as heretofore required by law; the whole of the expense attendant on which shall be charge-

able on such lands, and shall be made accordingly; in which advertisements shall be mentioned the situation of the lands, the streams near which or on which they lie, the estimated quantity, the names of the tenant or tenants in possession if cultivated, and the name or names of the reputed owner or owners where the same can be ascertained: *Provided*, That no sale of lands by virtue of this act shall take place previous to the first day of August in each year.

2. *And be it further enacted*, That no sheriff by himself or his deputy shall put up to sale at any one time for taxes, more than the one-tenth part of the land so advertised as aforesaid, but may proceed to sell in like quantities, until the whole is sold, unless a sum sufficient to pay the taxes due thereon shall be sooner made.

Manner of selling lands.

(Altered by 1798, c. 492, s. 1.)

3. *And be it further enacted*, That no sheriff by himself or his deputy, shall in any instance demand a double tax on lands, the reputed owner of which resides out of the county where such lands lie, unless the same shall be actually sold to pay the taxes due thereon, and unless he shall have advertised the same in manner aforesaid for three weeks, therein specifying that the same has not been given in agreeable to law; the expense whereof shall be chargeable upon the land; in which cases he shall be entitled to collect and receive a double tax, in case such lands were not given in or returned as taxable property: and in all cases of advertising lands for sale for the payment of the taxes due thereon, which lands have not been given in or returned on the list of taxables, the real or reputed owner or owners of which reside out of the counties where such lands are situated, and have no visible personal property therein, the sheriff in case the tax shall be paid before the sale of such lands, shall be entitled to demand and receive from such non-resident owners, the sum of twenty shillings to his own use, over and above the charges of advertising, as a compensation and in consideration of his services and trouble in the business; and in case of delay or refusal on the part of the reputed owner to pay the same, it shall be made, together with the cost and charges of advertising, by the sale of such lands or so much thereof as shall raise a sum sufficient.

In what cases double tax to be paid.

(See 1819, c. 999, s. 5.)

4. *And whereas* the fine imposed by law on sheriffs for not accounting for the taxable property not listed, is not sufficient to compel them to receive and account

Duty of sheriff on receiving list of taxables.

for all the taxes which of right they ought to collect: *Be it therefore enacted*, That it shall be the duty of each and every sheriff, immediately on receiving the list of taxable property from the clerk of his county, to set up at the court-house an advertisement informing the inhabitants of his county, that he has received such list, and holds it ready for inspection, and requesting them to give him information of any lands, polls or other taxable property in the said county not given in; and the sheriffs receiving information of any lands, polls or other taxable property not given in, and neglecting or refusing to account on oath to the comptroller agreeably to law, shall not only be subjected to pay the present fine of one hundred pounds, but he or they shall be further liable to pay the sum of five hundred pounds, to be recovered in any court of record having cognizance thereof; one half to the use of the state, and the other half to the use of such person who shall sue for the same. *Provided always*, That the fine of five hundred pounds shall not be inflicted in any case where the sheriff shall account with the treasurer, within six months from the expiration of the time allowed by law for his settling with the treasurer.

Duty of comptroller when sheriffs refuse to account on oath.

(a See 1795, c. 430, s. 1.)

5. And to the end that it may be known in the counties where the sheriffs reside, that he or they have failed or refused to account on oath: *Be it further enacted*, That it shall be the duty of the comptroller, when any sheriff shall fail or refuse to account with him on oath in due time and according to law, to cause such failure or refusal to be published in the North-Carolina Journal, the State Gazette or Fayetteville Minerva, for the space of four weeks.(a)

Certain land how to be given in.

6. And whereas in many instances tracts or parts of tracts of land are divided by county lines running through the same, whereby the owner or owners are prevented giving in accurate lists thereof, in order to its taxation in the different counties in which such land is situated, without previously having such land surveyed: for remedy whereof, *Be it enacted*, That from and after the passing of this act, it shall and may be lawful for any owner of land, which is divided by county lines running through the same, to give in a list of the same for taxation in the county of which such owner is an inhabitant, provided the owner resides in one of the counties in which part of the land so divided

is situate; and in case where the owner or owners are not residents of any of the counties in which any land so divided is situate, such owner or owners may by him or herself, agent or attorney, give in a list containing the whole number of acres of land in the tract by him, her or them so owned, in either of the counties in which any part of such tract is situate; any law, usage or custom to the contrary notwithstanding.

CHAP. 450.

An act to amend the several acts of the General Assembly, to prevent any person who now does or may hereafter hold any office, appointment or trust under the federal government, from being eligible to a seat in the General Assembly of this state; and to prevent any person from holding or exercising any office or appointment under the authority of this state, who holds any office or appointment under the authority of the United States. (See 1790, c. 319, s. 1, and 1792, c. 366.)

1. *Be it enacted, &c.* That from and after the passing of this act, it shall be understood, that ail and every collector of the excise, or any revenue accruing to the federal government, is within the true meaning and intent of the said laws, to prevent any person from holding any appointment, office or trust under this state, who does at the same time hold any office, appointment or trust under the United States; and if any collector of the revenue arising to the United States as aforesaid, shall at the time of his holding such an appointment, attempt or in any wise exercise the appointment of county trustee, treasurer of any denomination, or collector of any of the revenue arising to this state, he or they so offending shall be liable to all intents and purposes to the fines and forfeitures of the aforesaid acts, to be recovered and applied as by them directed. Collectors of excise, &c. not to hold state offices.

2. *And be it further enacted,* That the said act, so far as it relates to the senators or representatives of this state, vacating any commission they may hold in the militia thereof, by accepting a seat in the Congress of the United States, be and the same is hereby repealed and made void. (See 1790, c. 319, s. 3.)

CHAP. 451.

An act to explain the doctrine of pleas since the last continuance in controversies at law.

Whereas it is doubtful at present whether the entering of a plea since the last continuance of a suit in law, should be considered as a relinquishment by the defendant of pleas previously entered; and it being highly necessary that the law in such case should be permanently settled and distinctly understood:

New pleas not to do away from ones.

1. *Be it therefore enacted, &c.* That the entering of a plea since the last continuance of a suit in law, shall in no case whatever be construed a relinquishment of any plea or pleas previously entered, but the same shall retain the like force and operation which it or they would have had, if such plea since the last continuance had not been entered.

CHAP. 452.

An act to secure the impartiality of trial by jury, and to direct the conduct of judges in charges to the petit-jury.

Judges how to deliver their charges.

1. *Be it enacted, &c.* That it shall not be lawful for any judge, in delivering a charge to the petit-jury, to give an opinion whether a fact is fully or sufficiently proved, such matter being the true office and province of the jury: but it is hereby declared to be the duty of the judge in such cases, to state in a full and correct manner, the facts given in evidence, and to declare and explain the law arising thereon.

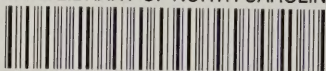
Either party may challenge two jurors.

2. And to avoid the effects of enmity and favor in particular jurors; *Be it further enacted,* That from and after the first day of March next, it shall be the duty of the clerk of the court, before a jury shall be empannelled to try the issue or issues in any civil cause depending therein, to read the names of the jurors upon the pannel, in the presence and hearing of the parties or their counsel: (a) and it shall be competent for either plaintiff or defendant, or their counsel for them, to challenge peremptorily two (b) jurors upon the said pannel, without shewing any special cause therefor; which challenge shall be allowed by the court, and the pannel shall then be made up as in other cases.

(a See 1801, c. 592, s. 1.)

(b May challenge four; see 1812, c. 833.)

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